

# Horsley Witten Group

*Sustainable Environmental Solutions*

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## Town of Dunstable Planned Production Plan for Affordable Housing

February 8, 2005



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Town of Dunstable  
Planned Production Plan for  
Affordable Housing

	<u>Page</u>
Executive Summary	1
Section 1: Comprehensive Housing Needs Assessment	3
Community Demographics	3
Population and Age Distribution	3
Racial Demographics	4
Income	6
Housing Demographics	10
Inventory and Trends	10
Age of Housing Stock	11
Price of Owner-Occupied and Rental Units	13
Development Conditions and Constraints	17
Municipal Infrastructure	21
Water	21
Wastewater	22
Roads	22
Recreational Facilities	23
Schools	23
Section 2: Affordable Housing Goals and Strategies	25
Goals	25
Identified Needs	25
Affordability Gap Analysis	26
Housing Needs for Renters	30
Housing Needs for Seniors and People with Disabilities	31
Housing Needs for First-Time Homebuyers	32
Summary of Needs	33
Housing Strategies	33
New Development of Apartment Units	34
New Development of Single or Multi-Family Dwellings	34
Zoning Bylaw Amendments	36
Apartments within Single-Family Residences	38
Senior Residential Multi-Family Development	38
Inclusionary Bylaw as Related to Standard Subdivisions	39
Inclusionary Zoning as Related to Open Space Development	39
Accessory Dwellings	40
Converting Existing Housing Stock to Affordable Units	41
Target Units	41
Sources of Funding	42
Local Outreach	42
Implementation Timeline	43
Section 3: Description of Use Restrictions and Administration	45
Description of Use Restrictions	45
Dunstable Housing Agent or Authority	46

## LIST OF TABLES

### Table

1.	Population Projections Developed by MAPC	3
2.	Distribution of Race in Dunstable from 1989 to 1999	4
3.	2004 HUD Income Limits for Housing Affordability	9
4.	2004 Housing Inventory for the Town of Dunstable	10
5.	Housing Characteristics in Dunstable 1990-2000	17
6.	Calculating an Income Multiplier to Determine a Reasonable Home Price	27
7.	Comparing Suitable Incomes for Specific Home Prices with HUD Income Affordability Guidelines in Dunstable	28
8.	Renters Households Income as a Percentage of Gross Rent	30
9.	Age of Renters and Percentage of Household Income Paid to Gross Rent	31
10.	Potential Participants in Creating and Supporting a Local Housing Partnership	35
11.	Housing Strategies Implementation Timeline	43
12.	Summary of Housing Strategies and Associated Use Restrictions	45

## LIST OF FIGURES

### Figure

1.	Historic and Predicted Age Distribution for Dunstable	5
2.	Median Income for Dunstable and Adjacent Towns	6
3.	Household Income Distribution for Dunstable	7
4.	Dunstable Household Income by Age Group	8
5.	Building Permit Trends in Dunstable	11
6.	Age of Housing Stock in Dunstable	12
7.	Historic Median House Price Sales in Dunstable	14
8.	Distribution of Housing Prices in Dunstable	15
9.	Rental Unit Price Distribution for Dunstable	16
10.	ACEC and NHESP Areas	18
11.	Wetlands and Certified Vernal Pools	19
12.	Salmon Brook Gravel Packed Well with Zone II	20
13.	Percent of Affordable Housing in Surrounding Municipalities	26
14.	Comparison of Existing Residents' Buying Power to Price of Existing House Stock	29
15.	Areas for Future Housing Development	37

References and Resources	47
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Attachment A: Sample Inclusionary Bylaw Drafted for the Town of Duxbury, MA

Attachment B: Examples of Use Restrictions that will serve as Models for Dunstable's Affordable Housing

## **Executive Summary**

The Town of Dunstable recently appointed a nine-person Affordable Housing Study Committee (AHSC) to assess the current situation regarding affordable housing in their community. Members of the group represented the general citizenry and various municipal boards including the Board of Health, Conservation Commission, Planning Board, and Zoning Board of Appeals. The goals of the group included preparing local Boards for upcoming Comprehensive Permit Applications, performing outreach to local residents regarding the issues surrounding affordable housing and Chapter 40B, and developing a Planned Production Plan to achieve their housing inventory targets. To assist them in their efforts, the AHSC enlisted the services of a certified planner from the Horsley Witten Group (HW) who is well-versed in affordable housing issues in Massachusetts.

The Planned Production Plan contains a comprehensive demographic and needs analysis, housing strategies specifically designed to address the specific needs of the Town, and a discussion of how the affordable housing inventory will be tracked and maintained. The strategies developed for the plan build upon several meetings with the AHSC, a public forum, discussions with the Westford and Groton Housing Authorities, discussions with the Department of Housing and Community Development (DHCD), and other planning efforts currently underway in Dunstable. The plan was developed to satisfy the Planned Production requirements set by DHCD, and also to serve as an educational document for local agents as they continue to explore different options for housing development into the coming decade.

The demographic analyses performed for the community show that Dunstable is a small rural town with approximately 3,000 residents. Population projections show the senior population rising steadily in response to the aging “baby boomer” generation, the population of first-time homeowners (age 25-44) decreasing, and the overall population of children rising steadily for the next ten years. Income demographics show that Dunstable is historically one of the wealthier towns in the region, owing primarily to higher property values in the community.

Housing stock in Dunstable is primarily detached single-family homes with a small percentage of multi-family and rental units. Prices for single-family homes have risen in Dunstable at an annual rate of 7.1% between 1990 and 2000, a rate of increase that has far outpaced that of local incomes within the Town during the same period (3.3 %). The aggressive nature of the housing market is not uncommon among rural Massachusetts communities, especially those that lie within an hour’s drive of the Greater Boston area.

In trying to target specific groups for housing, several conclusions were reached based on the review of existing data and affordability gap analyses. First, the most immediate need relative to affordable housing in Dunstable is for low-income rental properties. Second, demographic data showed that trends in the local housing market are moving to a point where first-time homebuyers may find it very difficult to purchase a home in the

community. Third, consistent with state and national trends, an increase in the senior population is expected over the coming 10 to 15 years, which may create a need for senior housing.

Strategies for increasing affordable housing stock in Dunstable were developed to serve the specific needs of the community. These strategies included new development of both rental and homeownership units, zoning amendments to require affordability restrictions for specific uses, and unit conversion through the use of public funding and strategic partnerships. New development opportunities have already been identified for a 30-unit apartment building under Chapter 40B, and planning for the newly delineated Mixed Use District will include affordable housing. Other town-owned parcels that may offer housing development opportunities have also been identified for later phases of implementation. Proposed zoning amendments include expanding the capacity for permitting accessory apartments with affordability restrictions; adjusting the existing Senior Residential Multi-Family Development provision to be consistent with Chapter 40B guidelines; and attaching inclusionary requirements to existing subdivision and Open Space Development provisions. Unit conversion strategies involve an ongoing process of identifying potential property, accessing funds through tax levies or public private partnerships, and continuing outreach through existing agencies and community groups.

The housing strategies developed for Dunstable were placed along a 10-year implementation timeline that will satisfy both the annual target increase of 0.75% and achieve an overall 10% inventory of affordable housing in the community. However, the AHSC strongly acknowledges that meeting the 10% statutory threshold does not necessarily mean that the housing needs of the community will be met. The process of providing affordable housing that is consistent with a community's needs is an ongoing and iterative planning process. As the local and regional economy continues to change, the AHSC is committed to revisiting this plan when necessary to address changing local needs. Many of the strategies identified in the report, such as zoning amendments and building the community's financial capacity, will continue to work well beyond the 10-year timeline and will lay the foundation for these future planning efforts.

As the inventory of affordable housing stock continues to increase, the community will address the need for an affordable housing agency or agent who will be responsible for monitoring existing units, identifying units for conversion, and facilitating development where appropriate. This agent will also be responsible for ensuring that proper use restrictions are placed upon new units and maintained through the re-sale process. The close of this plan provides three examples of deed restrictions or other regulatory agreements that may be used to ensure the long-term affordability of both rental and home-ownership units in Dunstable. These examples were compiled from local housing authorities and through a survey of models available via the Internet.

## Section 1—Comprehensive Housing Needs Assessment

### COMMUNITY DEMOGRAPHICS

#### *Population and Age Distribution*

The Town of Dunstable contained 2,829 people as of the 2000 U.S. Census. Based on existing demographic data and past trends in population growth, the Metropolitan Area Planning Council (MAPC) developed population projections for the community (Table 1; MAPC, 2003). Population shows continued growth in these projections through the year 2025; however, the rate of growth drops off significantly toward the end of the projection horizon. Although these projections can be a useful planning tool, it is difficult to accurately predict population figures 15 to 20 years in advance as there are so many intangible socioeconomic factors that can significantly affect the actual growth within a community.

**Table 1. Population Projections Developed by MAPC (MAPC, 2003).**

	Year of Population Data or Projection						
Age Group	1990	2000	2005	2010	2015	2020	2025
0-4	181	236	234	166	145	199	287
5-9	185	260	296	294	209	182	182
10-14	158	250	324	370	367	261	261
15-19	160	179	262	341	388	386	386
20-24	172	81	145	213	277	316	316
25-29	138	71	63	114	167	217	217
30-34	209	209	104	93	167	245	245
35-39	230	306	305	152	136	245	245
40-44	218	303	397	397	198	177	177
45-49	181	247	306	409	411	205	206
50-54	122	213	243	308	413	414	415
55-59	93	179	202	243	308	412	414
60-64	58	102	127	244	327	328	331
65-69	48	77	72	104	200	268	270
70-74	34	44	53	58	84	161	162
75-79	19	37	16	31	34	50	50
80-84	20	21	13	9	19	20	21
85+	10	14	12	15	14	19	20
<b>Total</b>	2,236	2,829	3,174	3,561	3,864	4,105	4,205

Figure 1 graphically depicts the relative increase or decrease in population of specific age groups between the years 1990 and 2005. Although the 2005 numbers still represent a calculated projection, their proximity to actual observed data make this a more statistically meaningful prediction of short-term growth trends. One of the more notable trends in the graph is the continued decrease of individuals between the ages of 25 and 34. This population age group generally represents the highest percentage of first-time home buyers and demonstrates a potential response to ever-increasing housing costs in an extremely competitive local market. These conditions can quickly push young individuals and families to other communities for housing.

Another notable trend apparent in Figure 1 is the steady increase in numbers of individuals between ages 40 to 64, with the larger increases in the groups between 40 and 54. These increases may also indicate a response to increases in housing prices and the desirability of living in a rural community that is rich in classic New England character like Dunstable. As people move beyond the years when they are raising children and also become more established in their careers, a community like Dunstable will become an attractive place to buy a nicer home. This trend is prevalent throughout Massachusetts and is one of many factors contributing to the consistent rise in home values in rural areas.

Finally, a more long-term perspective on Table 1 shows that the population of senior citizens is expected to rise significantly in the coming 20 years. This is a logical conclusion based on the increase in the 40 to 54 age group over the next 10 years depicted in Figure 1 and discussed above. These trends in the elderly population were used to shape the housing production strategies in Section 2 below.

### *Racial Demographics*

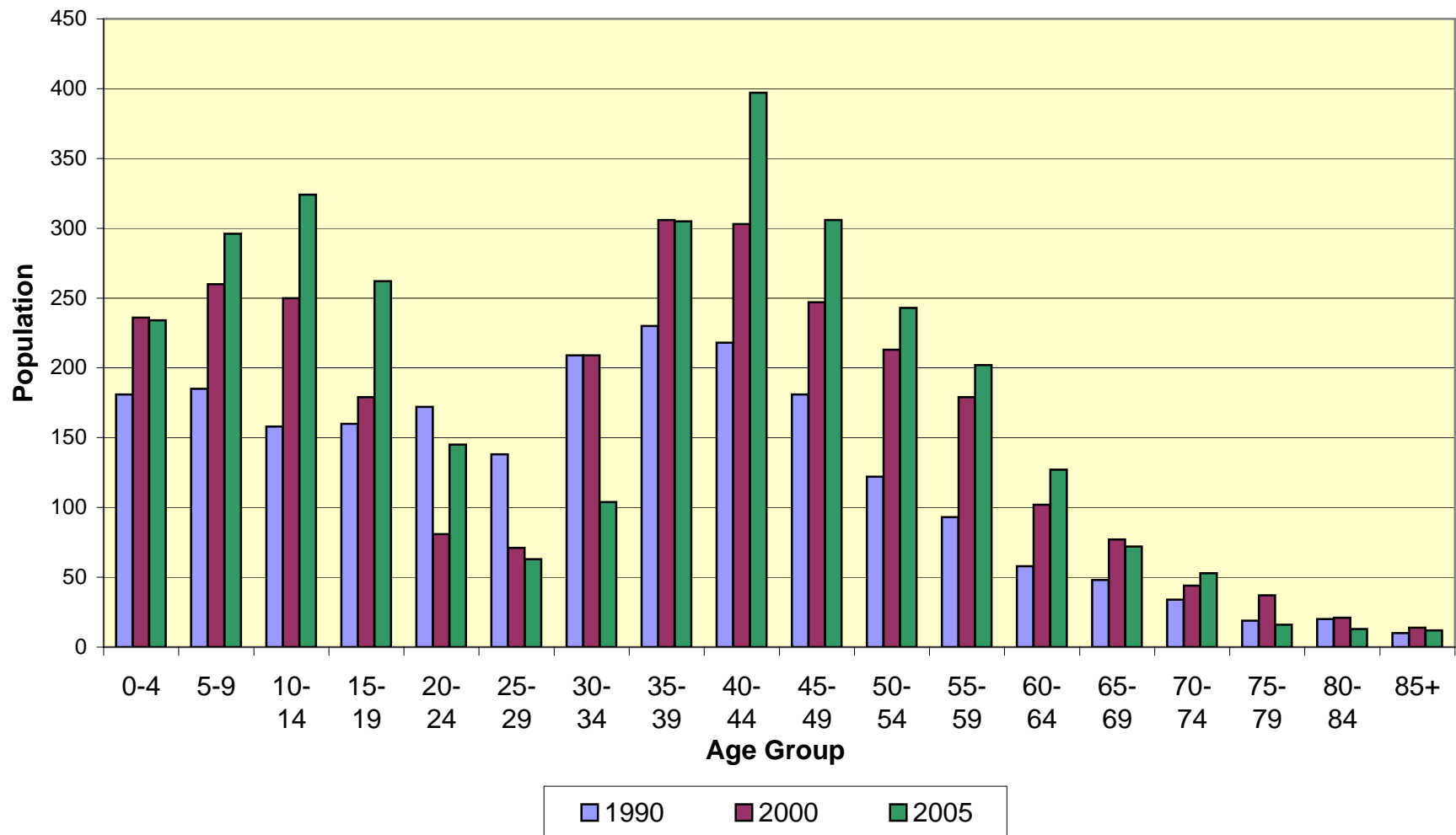
According to the 2000 U.S. Census, Dunstable is a racially homogenous community with over 99% percent of its citizens being white. Table 2 summarizes the demographic trends in the community between two decennial census surveys.

**Table 2. Distribution of Race in Dunstable from 1989 to 1999 (U.S. Census, 2000).**

<b>Race</b>	<b>1989</b>		<b>1999</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
White	2,212	98.53%	2,807	99.22%
African American	7	0.31%	0	0.00%
American Indian and Alaskan Native	4	0.18%	0	0.00%
Asian, Native Hawaiian and Other Pacific Islander	12	0.53%	17	0.60%
Hispanic origin	9	0.40%	0	0.00%
Other Race(s)	1	0.04%	5	0.18%



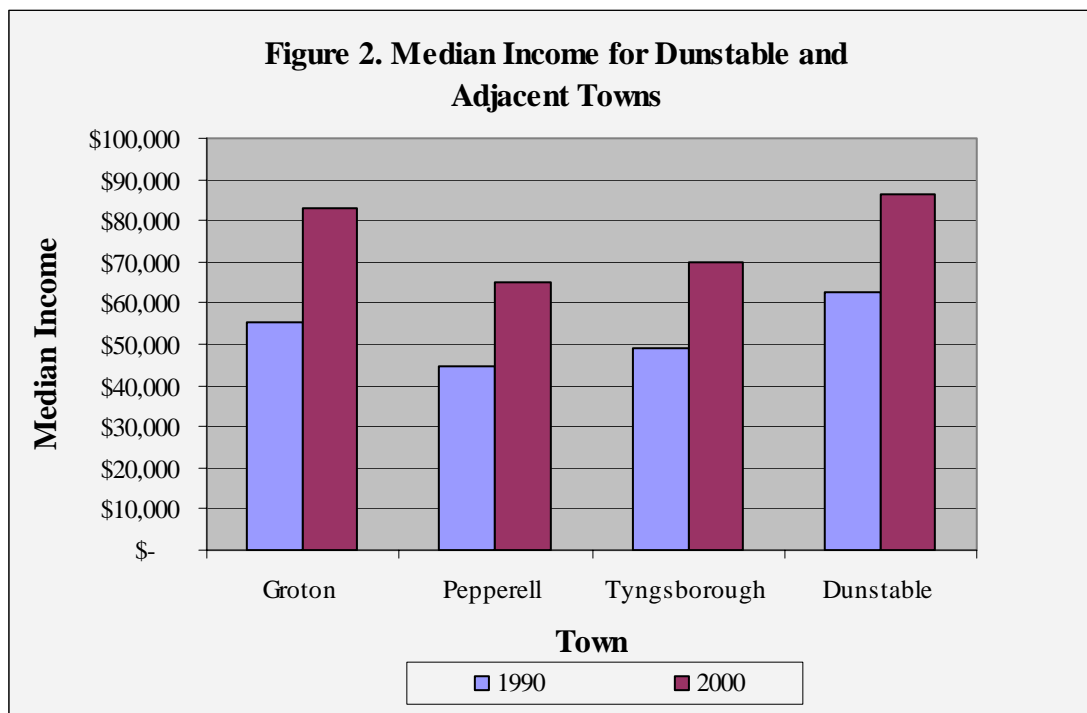
**Figure 1. Historic and Predicted Age Distribution for Dunstable**  
(Source: MAPC Community Population Forecasts)



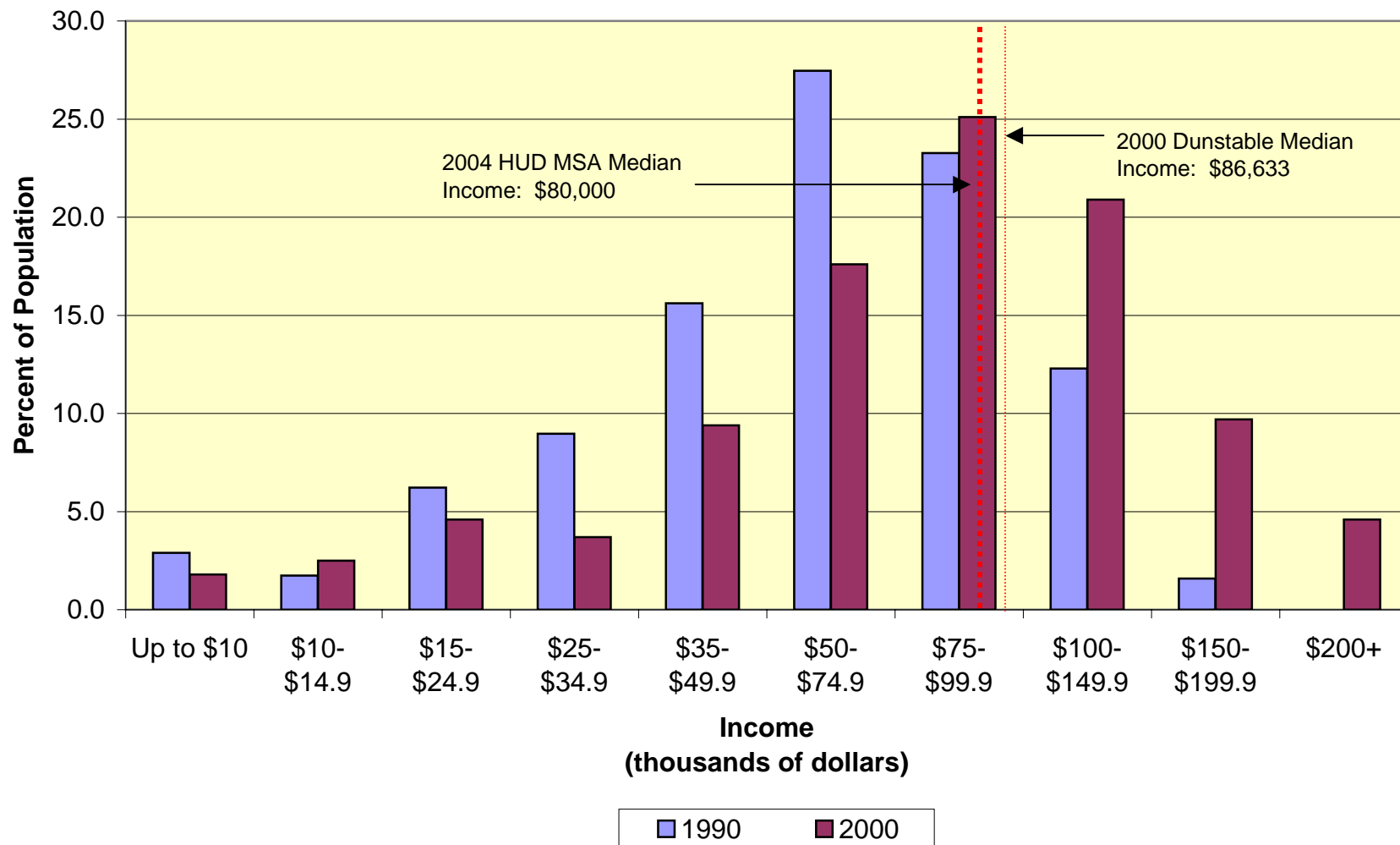
The statistics summarized in Table 2 demonstrate that the community will have to ensure that any housing lotteries created for development in Dunstable will have to meet all federal and state-level requirements for affirmative marketing within their Metropolitan Statistical Area (MSA).

### *Income*

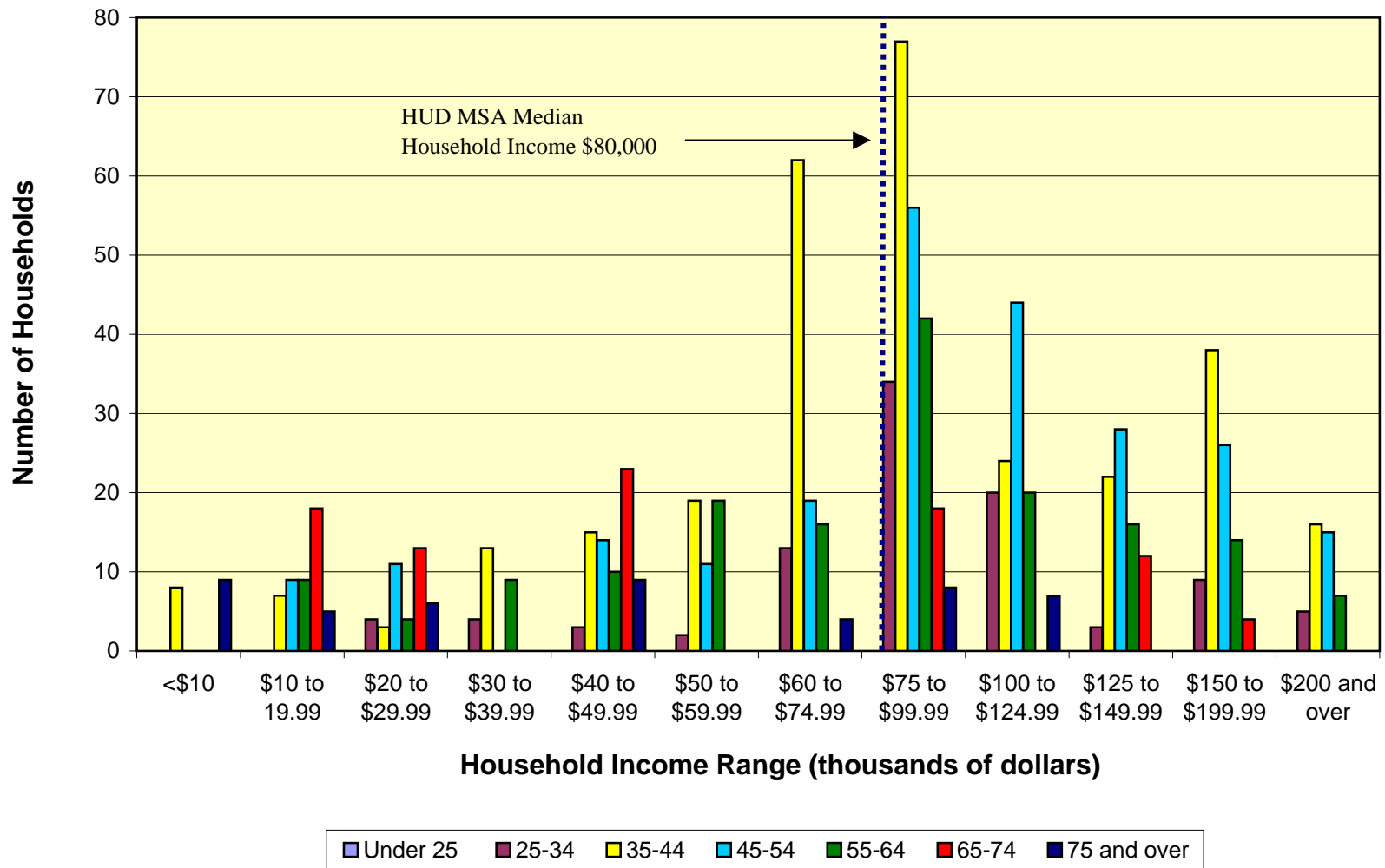
The median household income in Dunstable as of the 2000 U.S. Census was \$86,633, which represents a 39% increase from the 1990 figure of \$62,515. To put this in perspective, the increase from the 1990 to the 2000 statewide median household income was 37% (from \$36,952 to \$50,502). The increase experienced by residents of Dunstable was therefore consistent with statewide trends. Household incomes in Dunstable have historically been higher than those in neighboring towns as shown in Figure 2 (U.S. Census, 1990 and 2000). An examination of U.S. Census data showing the historic distribution of household incomes is depicted in Figure 3 with the 2000 data broken out by age group in Figure 4.



**Figure 3. Household Income Distribution for Dunstable**  
(Source: U.S. Census Decennial Data)



**Figure 4. Dunstable Household Income by Age Group**  
(Source: U.S. Census 2000)



When examined by age group, the wealthiest portions of the household population are those with a head-of-household between the ages of 35 to 44. This group is followed closely by those households with a head-of-household between the ages of 45-54. It is important to note that for the first-time home buyer population (25-44), a significant portion have household incomes in the moderate to median range (Figure 3). This is an indication that the first-time home buyer group currently has a strong market in Dunstable, probably due in part to its proximity to strong job markets in the Nashua and Greater Boston areas.

It is important to note that, relative to Chapter 40B, the median income for an individual community is determined by the Housing and Urban Development (HUD) Metropolitan Statistical Area (MSA) median value. Dunstable is part of the Lowell MSA, which is shared by nine other municipalities in the region\*. The median income for the Lowell MSA in 2004 was \$80,000. HUD calculates affordability limits for households using a variety of formulas depending on the subsidy program that will be used and also considering the number of individuals in a particular household. Calculations for the different categories are slightly adjusted based on specific regional characteristics. Therefore, it is necessary to determine the location, subsidy program and type of housing to accurately determine the cost of housing for each subsidized project. Table 3 summarizes the affordable income limits published by HUD in 2004.

**Table 3. 2004 HUD Income Limits for Housing Affordability (Lowell Metropolitan Statistical Area).**

Number of People in Household	Household Income Classification (dollars)		
	Low Income	Very Low Income	30% of Median
<b>1</b>	40,250	28,000	16,800
<b>2</b>	46,000	32,000	19,200
<b>3</b>	51,750	36,000	21,600
<b>4</b>	57,500	40,000	24,000
<b>5</b>	62,100	43,200	25,900
<b>6</b>	66,700	46,400	27,850
<b>7</b>	71,300	49,600	29,750
<b>8</b>	75,900	52,800	31,700

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\* The other municipalities in the Lowell MSA include Billerica, Chelmsford, Dracut, Groton, Lowell, Pepperell, Tewksbury, Tyngsboro and Westford.

## HOUSING DEMOGRAPHICS

### *Inventory and Trends*

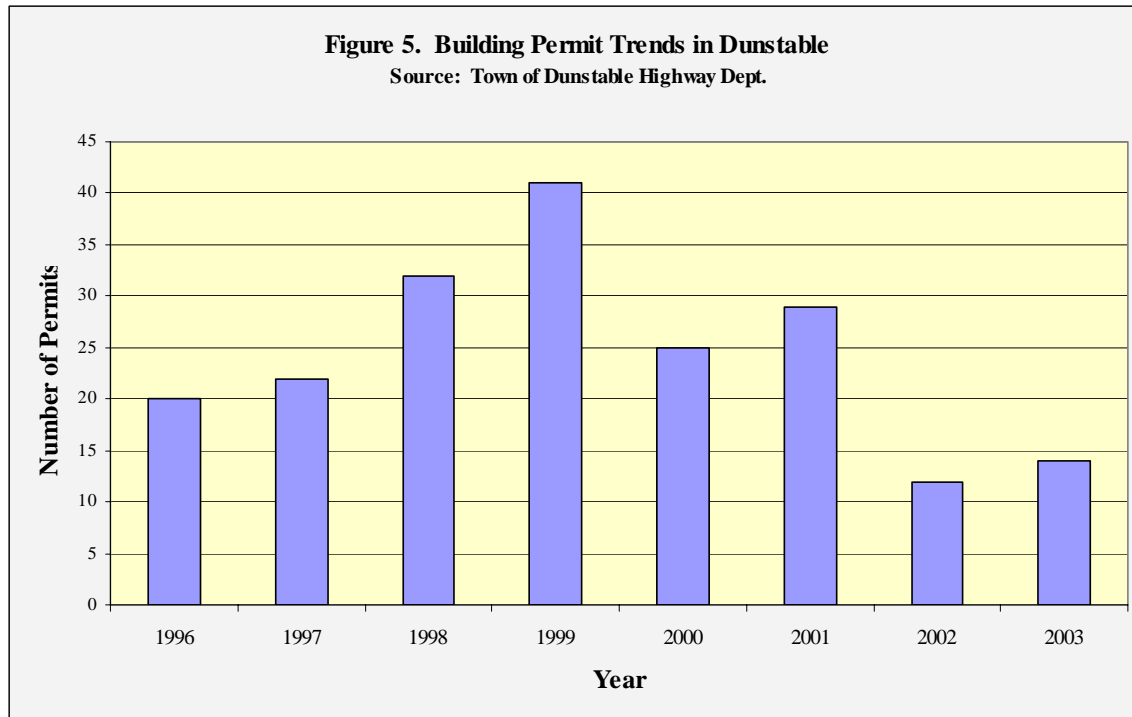
As of the 2000 U.S. Census, the Town of Dunstable contained 923 units of occupied housing. Recent data collected from the Assessor's Office shows that this number has grown to 1,044 (Table 4). It would be difficult to pinpoint a predominant architectural style as the housing stock is an eclectic mix of old farmhouse, ranch, neo-Georgian, Colonial, and several other styles from many periods. Lot sizes also vary significantly as some houses are situated on lots that are too small to conform with existing zoning regulations while others are located on vast acreages of farmland.

**Table 4. 2004 Housing Inventory for the Town of Dunstable (Dunstable Assessor's Office, 2004).**

<b>Housing Type</b>	<b>Number of Units*</b>
Single Family	973
Condominium	0
Two-Family	11
Senior Housing	0
Agriculture with Living Space	60
<b>Total</b>	<b>1,044</b>

\*Dunstable contained 61 units of rental property as of 2000. These properties are distributed between single-family and two-family homes.

The Assessor's data in Table 4 clearly show that the vast majority of housing units in the Town of Dunstable are single-family detached homes. This most recent inventory is consistent with the building permit trends depicted in Figure 5, which show an average of 24 new permits issued per year over the past 15 years. Calculations of future affordable housing needs for this plan will therefore assume an average annual increase of 24 homes in the community.

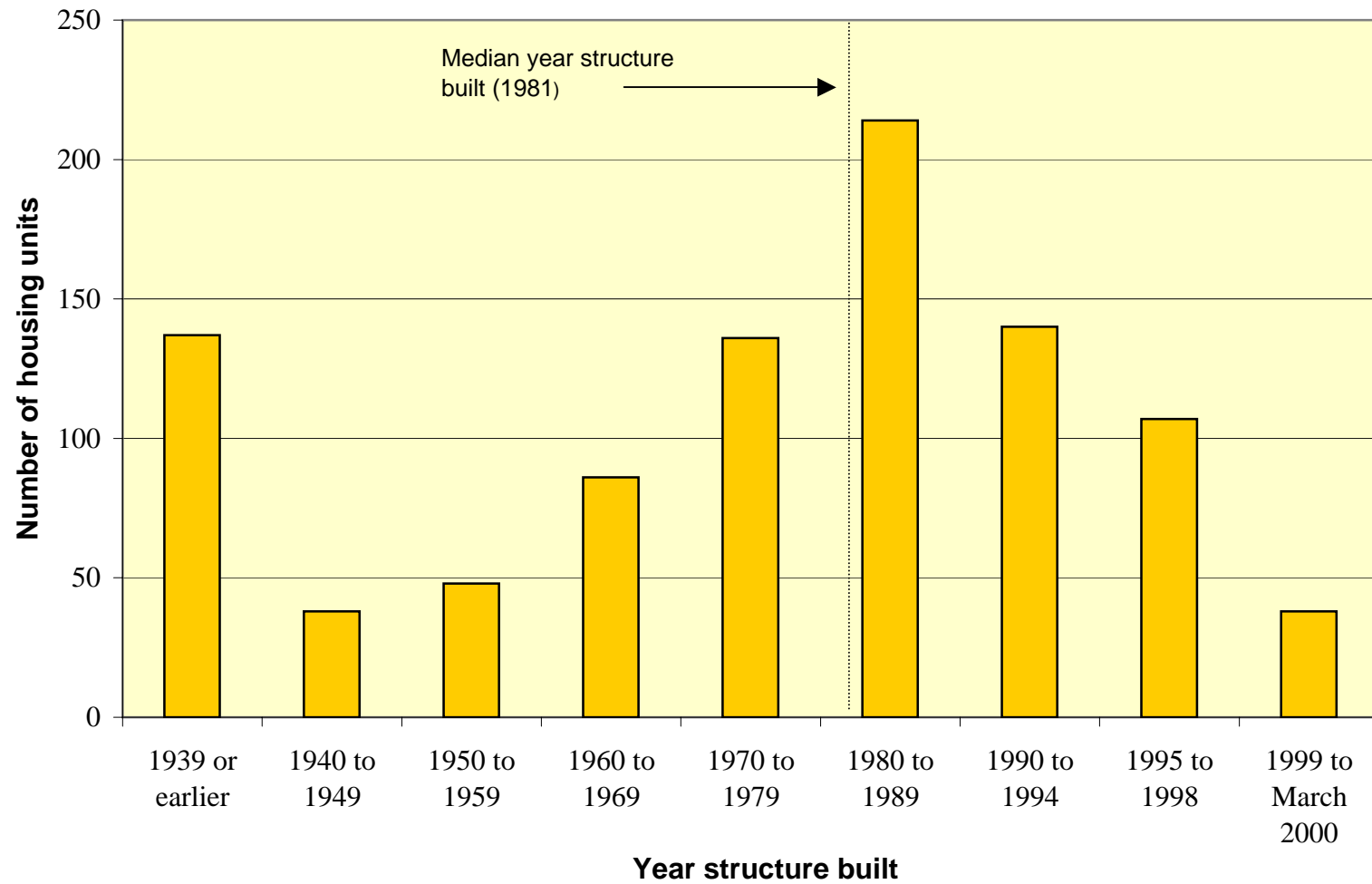


Data from the existing Open Space and Recreation Plan (Fletcher, 1998) shows that subdivision activity climbed steadily from the 1970's and peaked in the 1980's with 74 lots being created in that decade. Subdivision activity appears to have notably decreased in the 1990's with the reported data from the first six years showing only five lots were created in this period. Although most of the community requires two-acre minimum lot size, the large tracts of contiguous unprotected parcels create a high potential for future subdivision activity. This includes much of the existing farmland, which is registered under the Chapter 61 program. Although the Town has the right of first refusal for these Chapter 61 parcels, in the absence of funding these areas could be sold to developers for residential development.

#### *Age of Housing Stock*

The age of the overall housing stock in Dunstable is relatively young, based on the U.S. Census 2000 reporting a median age of 19 years (Figure 6). The "young age" of the community's housing stock demonstrates the steady interest in new development over the past several decades and further demonstrates that Dunstable is poised for high levels of residential development in the coming years. Despite the fact that the vast majority of houses were built after 1970, Dunstable does have close to 150 houses built prior to 1939. These older homes represent a significant resource for the community as they contribute to the rural New England character that makes Dunstable an attractive community.

**Figure 6. Age of housing stock in Dunstable**  
(Source: U.S. Census 2000)





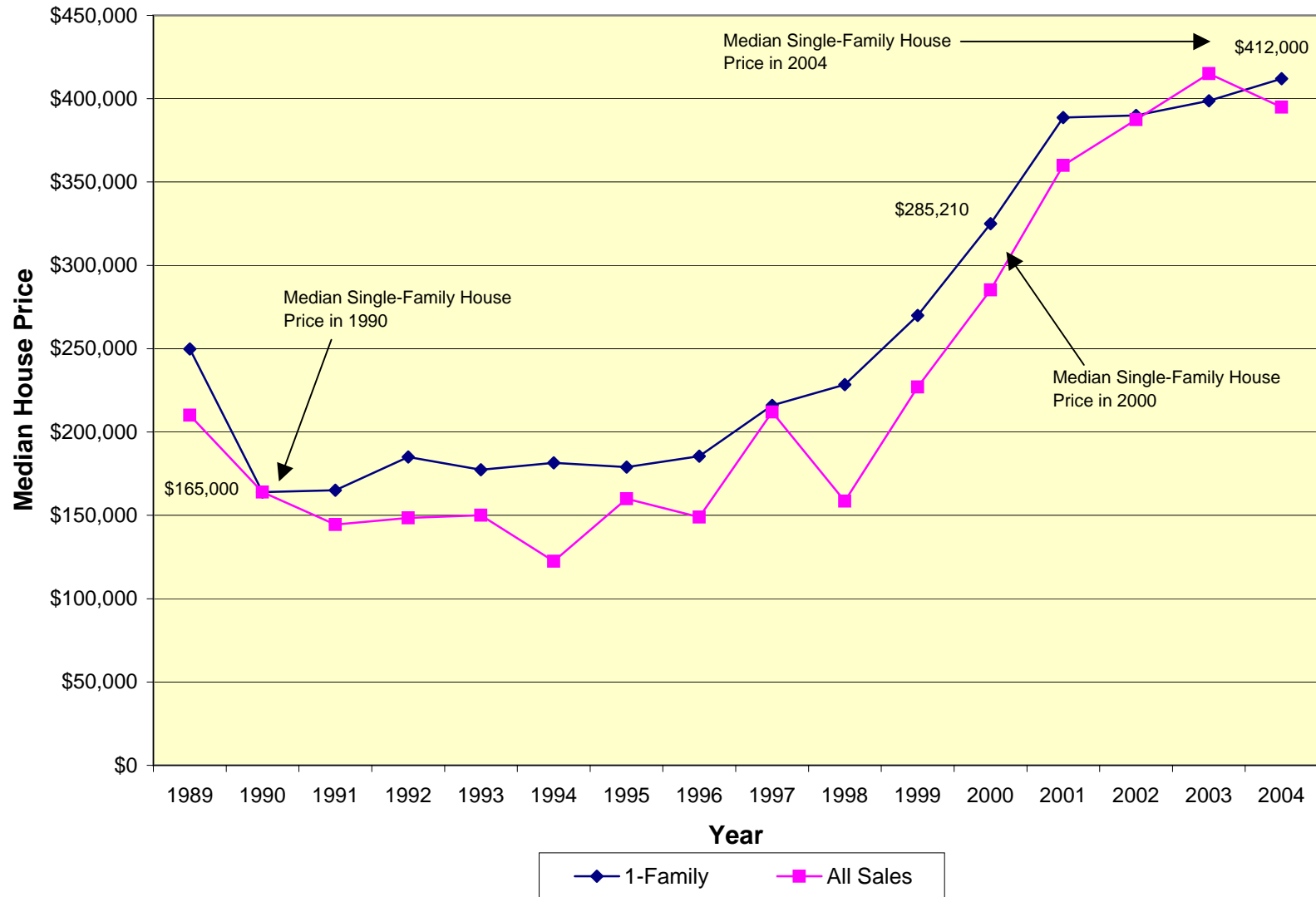
### *Price of Owner-Occupied and Rental Units*

The price of housing in Dunstable has risen considerably in the past fifteen years, which is certainly consistent with trends throughout the Commonwealth. Figure 7 charts the relatively consistent rise in the median sales price of single-family homes in Dunstable as well as the rise in “all sales”, which includes multi-family and rental property. Figure 8 shows the most recently reported distribution of housing prices in the community. For single-family homes, the lowest median price recorded over this 15-year period is \$164,000 in 1990 and the highest is \$412,000 in 2004 (using 6 months of reported data from the Warren Group). The average annual increase in the median home price between 1990 and 2000 is 7.1%. Notably, this is more than twice the average annual increase of the community’s median income for that same period (3.3%). Simply put, the rise in home costs is far outpacing the rise in local household income.

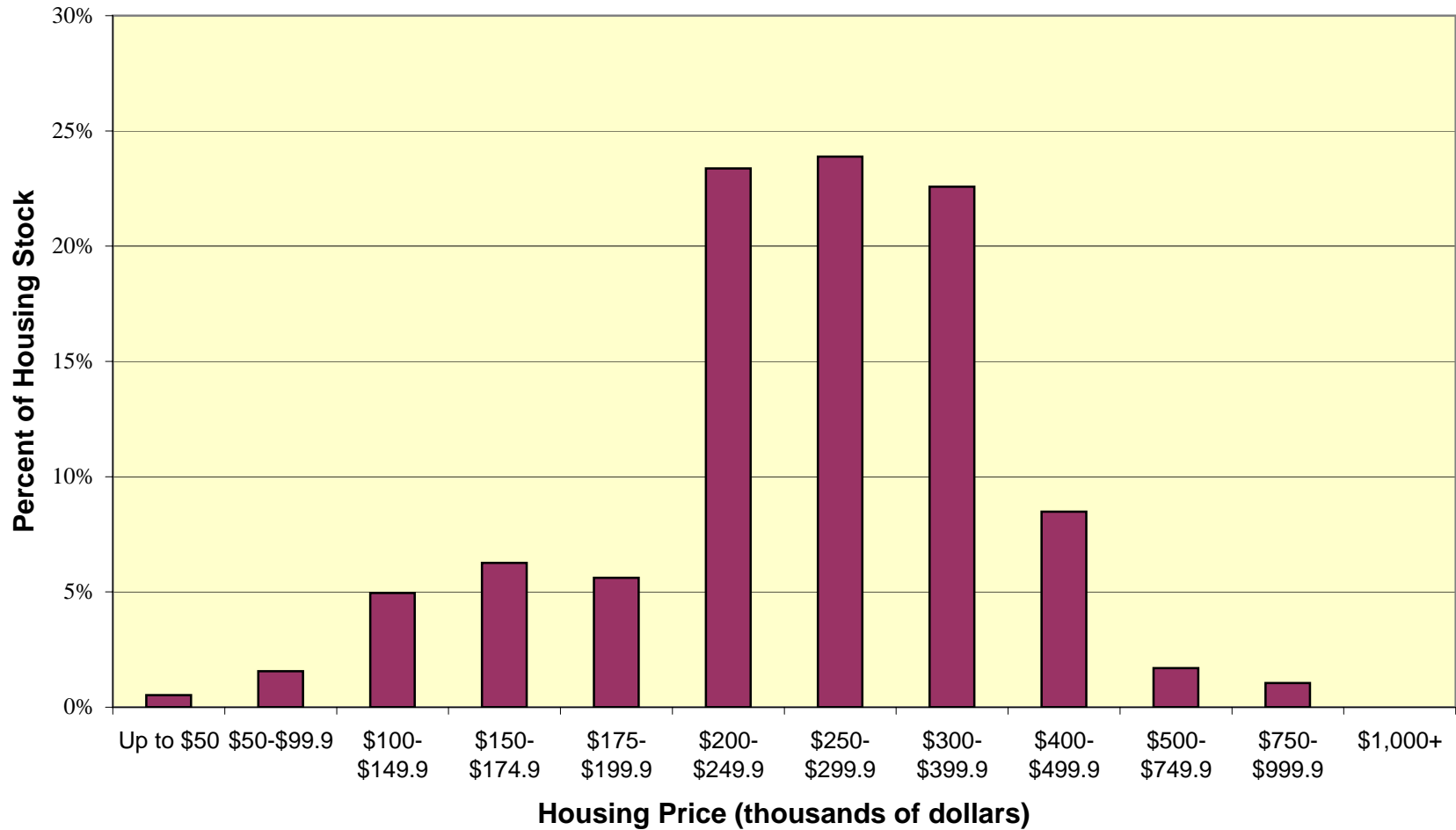
According to the U.S. Census, in the year 2000 there were a total of 61 renter-occupied housing units and four vacant rental units in the town of Dunstable. Presently, this number of vacant rental units appears to be an overestimate (personal communication with Dunstable realtors). With a large majority of the housing supply consisting of single-family homes, rental units are scarce. Over the last year, only three rental units have been advertised to date, two of which were in the same home. All three rentals were in residences where the unit was rented out by the homeowner. If one were to find a rental in Dunstable, he or she would most likely find it in the local newspaper and the average price for a two-bedroom rental unit would typically be between \$1,000 and \$1,200 (personal communication with Dunstable realtors).

In 1990 there were 54 renter-occupied housing units in Dunstable with a median rental rate of \$613 per month (U.S. Census 1990). Census 2000 data show that rental rates were in the range of \$400 to approximately \$1,250 per month for the 61 renter-occupied housing units in the Town (Figure 9). The median reported rate from this 2000 data set was \$704. Of the 2000 stock of rental units, 22 were renting for between \$1,000 and \$1,250 per month. All price ranges below this higher level were fairly evenly represented with between four and nine units each.

**Figure 7. Historic Median House Price Sales in Dunstable**  
(Source: The Warren Group, 2004)



**Figure 8. Distribution of Housing Prices in Dunstable**  
(Source: U.S. Census 2000)



**Figure 9. Rental Unit Price Distribution for Dunstable**  
(Source: U.S. Census 2000)

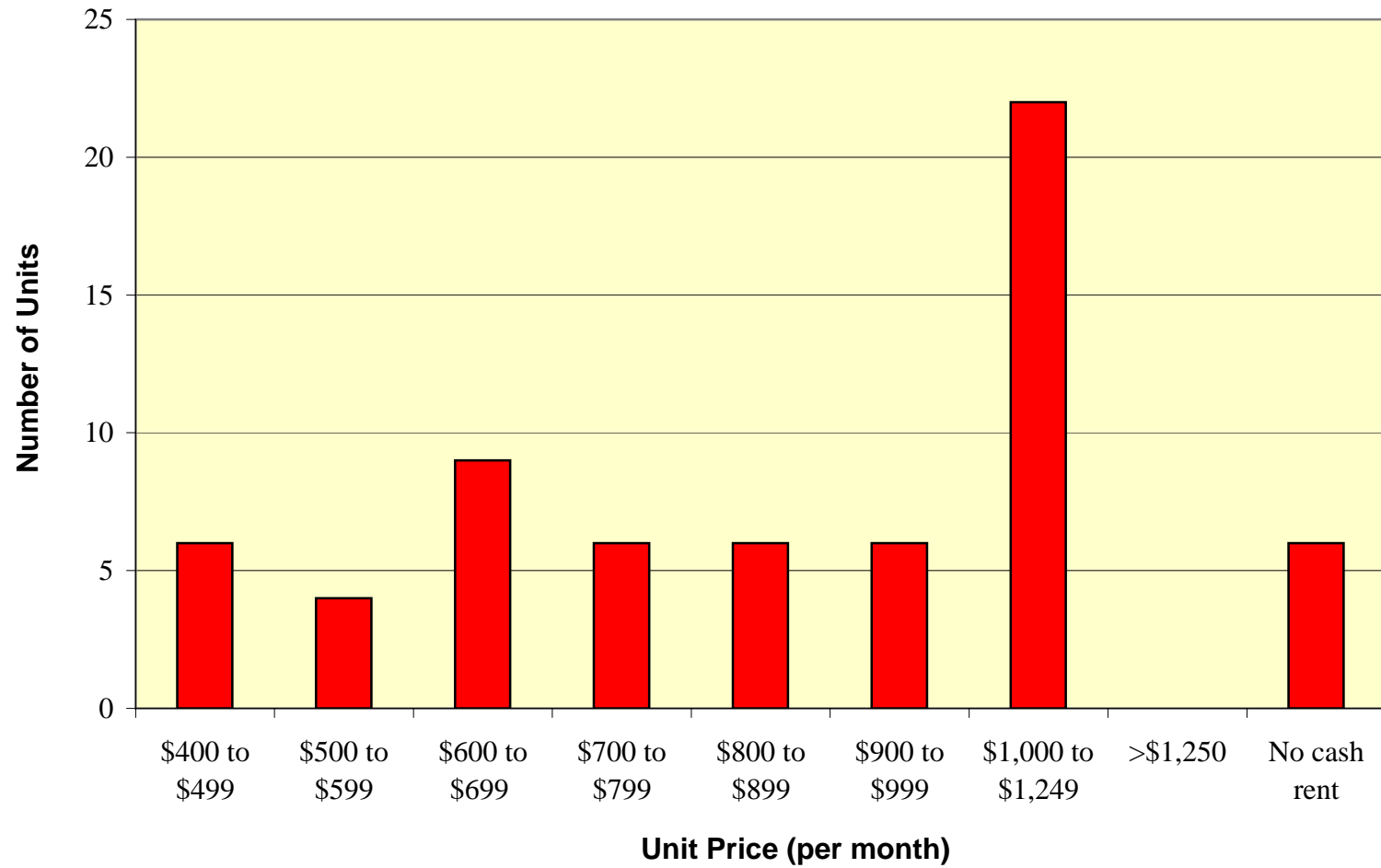


Table 5 shows the changes in housing stock between 1990 and 2000 U.S. Census data as they relate to owner-occupied and rental occupancies. These statistics demonstrate that Dunstable has maintained a very high occupancy rate in all areas of housing over the course of two decades. These occupancy rates, for both renters and buyers, show a high demand against a limited supply of housing. These conditions foster high levels of competition among consumers and will likely drive prices to rates higher than average. An examination of trends in single family home prices in other sections of this plan support this premise.

**Table 5. Housing Characteristics in Dunstable 1990-2000.**

	1990		2000	
	Number	Percent	Number	Percent
Total Housing Units	737	100%	944	100%
Occupied Units	692	94% <sup>1</sup>	923	98% <sup>1</sup>
Owner-Occupied Units	638	92% <sup>2</sup>	862	93% <sup>2</sup>
Renter-Occupied Units	54	8% <sup>2</sup>	61	7% <sup>2</sup>

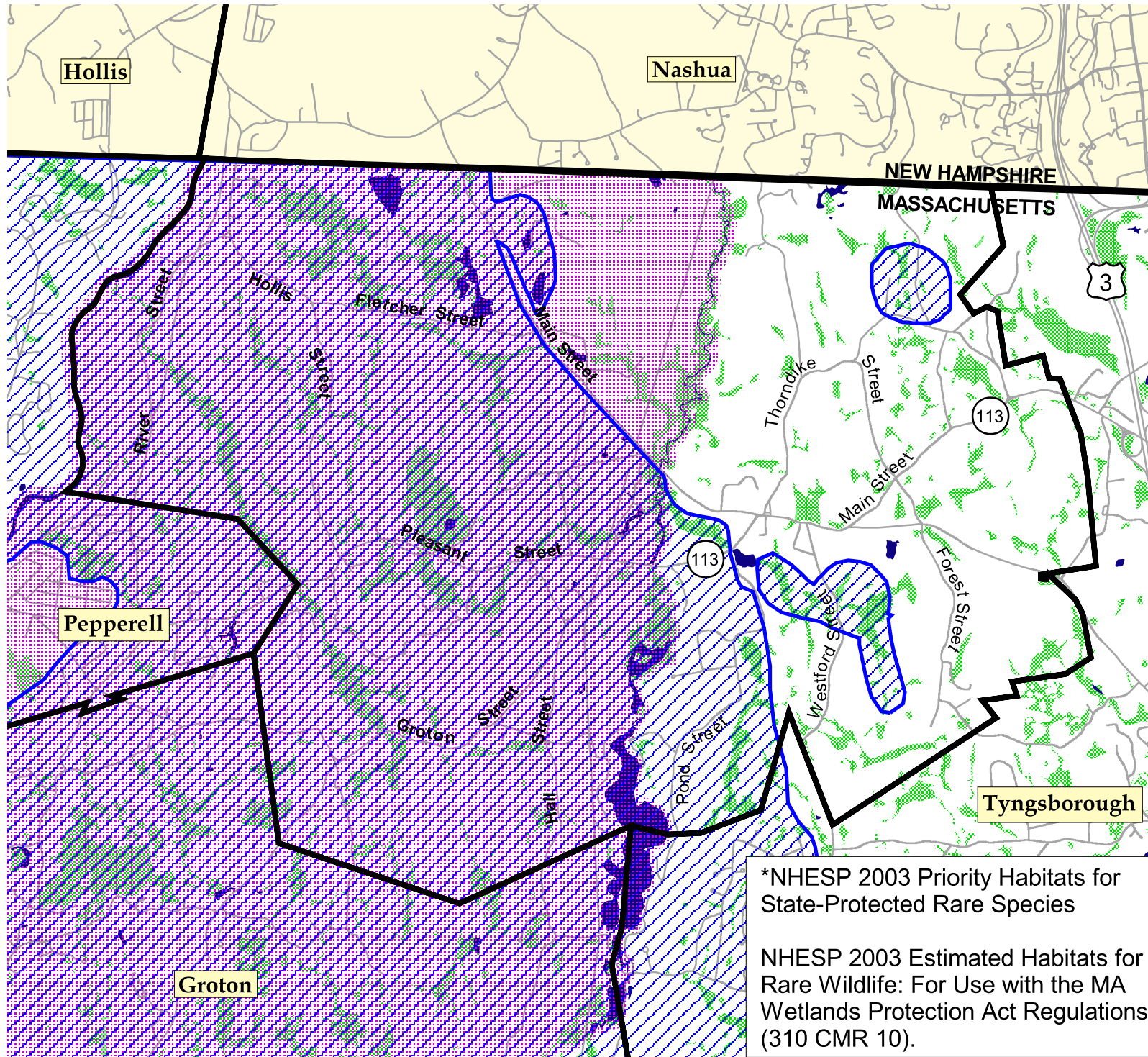
1 Percentage of total housing units

2 Percentage of occupied units







## DEVELOPMENT CONDITIONS AND CONSTRAINTS

Dunstable is a community rich in natural resources and conservation lands. A significant portion of the community lies within an Area of Critical Environmental Concern (ACEC) (Figure 10). Also, the same general area has been designated both as Estimated Habitat of Rare Wildlife and Priority Habitat of Rare Species by the Natural Heritage and Endangered Species Program (NHESP). The Town contains approximately 1,300 acres of wetland and 12 certified vernal pools dispersed throughout the community (Figure 11).

Of primary concern within the community is the health of the Salmon Brook aquifer, which serves as the sole source of public drinking water for the community. The wellhead for this supply lies in the alluvial deposits adjacent to the river (Figure 12) and could therefore be a groundwater source under the direct influence of surface water (GWUDI). In other words, the drawdown in groundwater from the active well could extend to the river itself and cause diversion of the Salmon Brook to the wellhead. Although monitoring has not yet been performed to establish this hydrologic connection, the potential for this



## Legend

-  Town Boundary
-  NHEAP Areas\*
-  Area of Critical Environmental Concern
-  Roads
-  Wetland
-  Open Water



0 4000 Feet

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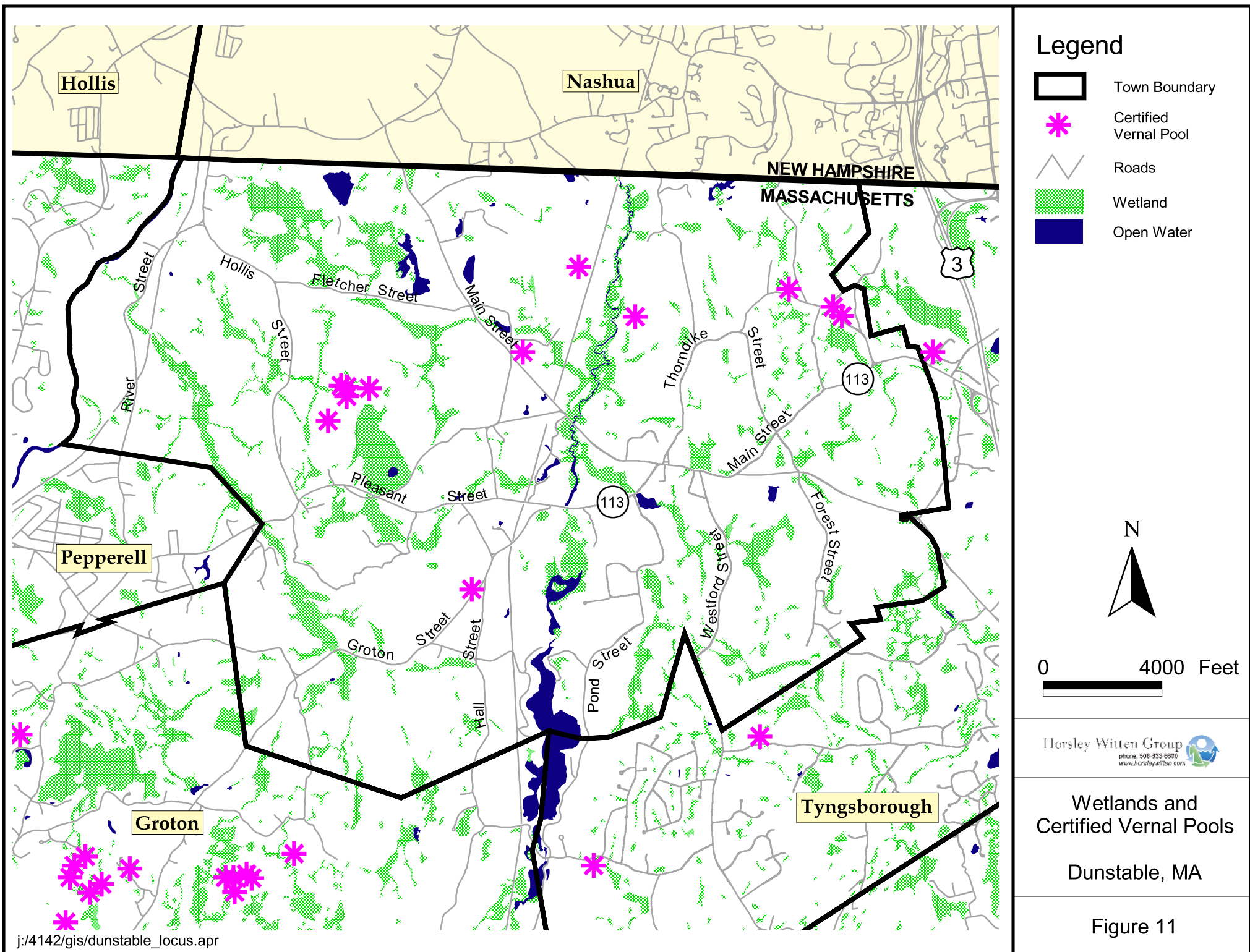
ACEC and  
NHEAP Areas

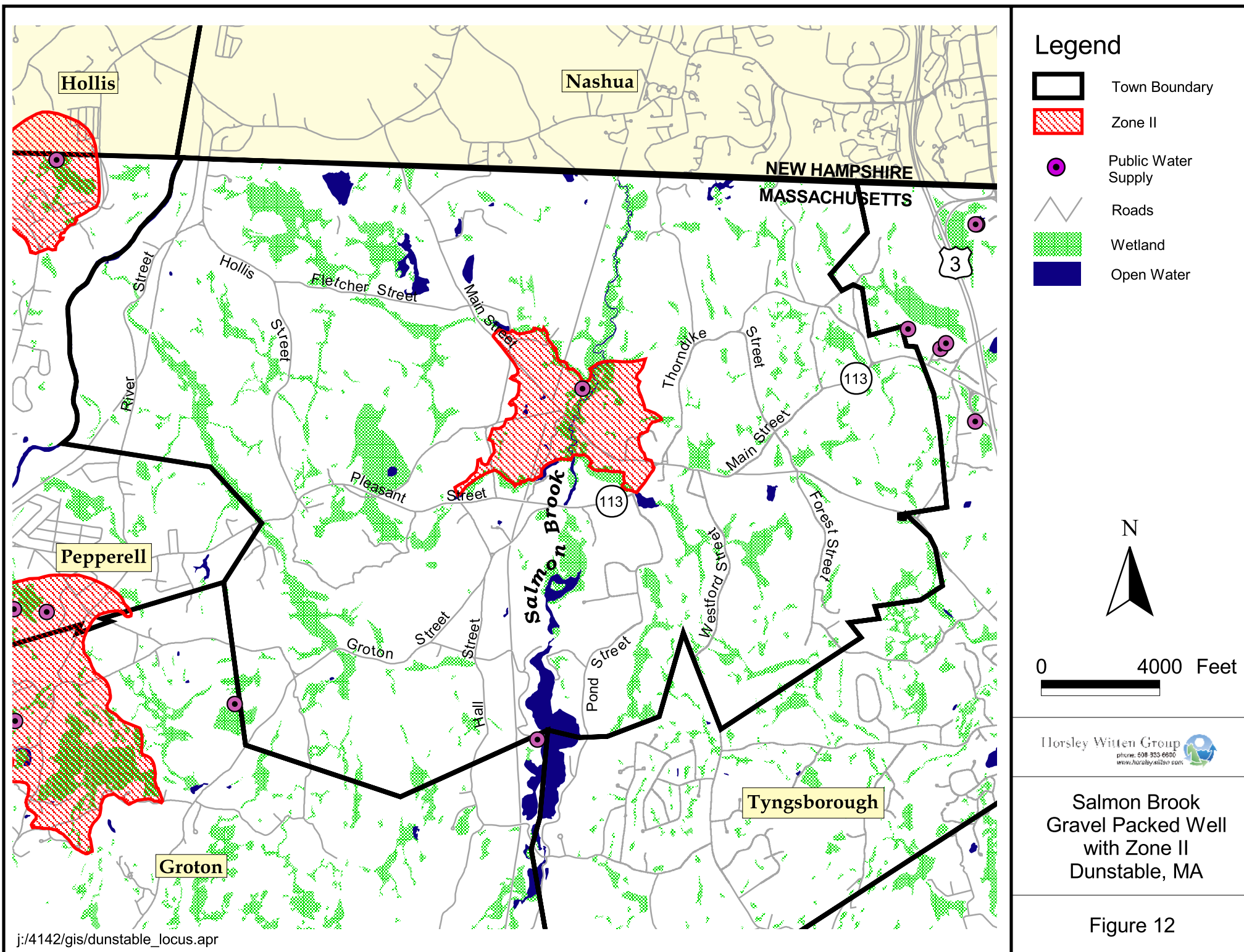
Dunstable, MA

Figure 10

\*NHEAP 2003 Priority Habitats for  
State-Protected Rare Species

NHEAP 2003 Estimated Habitats for  
Rare Wildlife: For Use with the MA  
Wetlands Protection Act Regulations  
(310 CMR 10).







connection makes it imperative that Dunstable protects both the aquifer and the Salmon Brook surface waters from pollutant loading.

Another potential development constraint is the soil profile in specific areas of the community. Overall, the subsurface area of Dunstable is characterized by typical New England glacial geology. A mix of glacial till, outwash and alluvial deposits lie beneath a rolling landscape that is, in some areas, characterized by severe slopes. These conditions can make the siting of buildings and septic systems challenging and therefore serve as a partial development constraint for many parcels in the community.

The capacity for the Town of Dunstable to mitigate these development constraints is limited as many of these constraints are widespread natural occurrences. Furthermore, the small population does not provide the tax base or the critical mass to justify large-scale improvements such as a wastewater treatment facility to alleviate Title 5 constraints. Some of the municipal facility improvements that could be made are discussed below.

## MUNICIPAL INFRASTRUCTURE

### *Water*

Dunstable has a limited centralized public water supply with approximately 100 connections. The majority of these connections are to residential properties. However, the elementary school, municipal facilities (fire station, police, library, post office, etc.), and a small assortment of commercial properties are also connected to the system. The wellhead for this supply is the Salmon Brook Gravel Packed Well (DEP #2081000-02G). The Zone 2 for this water supply covers just over 440 acres in the central part of the Town (Figure 12). This wellhead has the capacity to provide 360,000 gallons per day (gpd), but currently supplies approximately 40,000 gpd. In accordance with state regulations, a backup well for the Salmon Brook public water supply is being installed and will be functional within a year. This well will be designed to pump 360,000 gpd at capacity (personal communication with Dunstable Water Commission).

The majority of Dunstable is served by private on-site wells. In general, there is little difficulty siting private wells. However, there have been isolated cases where individual lots were unable to produce adequate volumes of water supply (personal communication with Dunstable Water Commission).

One existing problem in Dunstable that has not yet been adequately addressed is the adequacy of the existing fire hydrant system. Only a small portion of the Town actually has fire hydrants and these would not be able to supply adequate volumes of water in case of an emergency. Dunstable would still be reliant on tank trucks to deliver water from neighboring Towns to adequately handle a fire emergency. To address this problem, and to potentially prepare for other areas of development, the Town has identified a site that may be feasible for constructing a water tower. Although the actual construction of this

tower could be several years away, discussions with the Water Commission suggest that a 300,000-gallon capacity system would be adequate to accommodate the future needs of the community.

### *Wastewater*

Dunstable relies exclusively on individual on-site septic systems to manage wastewater in the community. The community adopted a set of on-site disposal regulations in February, 1996 and amended these in May of 2000. These regulations cover many aspects of the siting installation and inspection of on-site septic systems and, in several cases, go beyond the requirements of Title 5. Standards for installing leaching facilities, determining seasonal high groundwater elevations, design drawings and as-built plans are included in these regulations, which are enforced by the local Board of Health.

Discussions with the Board of Health confirmed that siting septic systems can be challenging in the community due to the high groundwater table and soil types in many areas of Dunstable. Although this can be a costly problem to solve, homeowners in Dunstable have regularly paid the substantial costs associated with siting and installing a mounded septic system. The strict enforcement of state and local regulations have resulted in an extremely low rate of septic system failure throughout the Town.

To date, there are no shared neighborhood scale “package” treatment plants in the Town of Dunstable. The low-density development that is characteristic of the community has not historically led to large-scale subdivisions and, therefore, these shared systems have not been a viable option. With the current focus on affordable housing in the community, Dunstable will look to foster some higher density, cluster-style or apartment development (See Section 2 below). The more efficient use of land in these housing areas will lend itself to consolidated wastewater treatment plant at a neighborhood scale. These systems will not only serve multiple units more effectively than individual on-site septic systems, but will also provide higher levels of treatment and protection of groundwater resources.

### *Roads*

Dunstable roadways are characterized by narrow winding streets, with the exceptions of its one artery, Route 113 (Pleasant and Main Street), and some of its larger collector roads such as Main Street as it splits from Route 113. The narrow winding character of Dunstable’s streets is typical of an older community where many of the roads were first developed as farm roads. Most of the roads are 14 to 15 feet wide (personal communication with Dunstable Road Commission) and many have little or no shoulder area. Approximately 90% of all roads in Dunstable are owned and maintained by the Town. These roadways are a central feature to the rural community character of Dunstable and are limited in their capacity to support high levels of traffic.

Despite their design, roadways in Dunstable continually experience traffic congestion during typical commuting hours. The geographic location of the Town—between

Groton, Nashua and the Route 3 highway—makes it a prime “short-cut” for people traveling through this region at rush hour. Anecdotal reports suggest that the area surrounding Town Hall is particularly problematic and can cause significant traveler delays at peak hours. When considering impacts from future development, it is important to the residents to keep development at a reasonable and incremental level so that the community can make gradual adjustments to roadways.

### *Recreational Facilities*

The wide tracts of conservation lands, land trust holdings and state lands in Dunstable serve as the primary source of recreation in the community. Aside from providing valuable environmental benefits, many of these lands serve as places for hiking, cross-country skiing, bicycling, fishing, hunting and horseback riding. Other notable recreational opportunities including the Lowell YMCA Camp, Larter Field and the Nashua River Rail Trail bikepath.

### *Schools*

Dunstable is a member of the Groton-Dunstable Regional School District, which is made up of four elementary schools, two middle schools and one high school. The Groton-Dunstable High School has a classroom capacity of 850 pupils (core capacity of 1,200 pupils). The enrollment for the 2004-2005 school year as of October 1, 2004 is 767 students. In two years, including growth due only to students presently residing within the district, it is estimated that the high school student population will reach 851 students, and in three years, 910 students. This indicates that the school system will reach its maximum capacity within two years, based solely on the present population growth rate within the district (personal communication with the business manager for the Groton-Dunstable school district).

The middle school capacity is 1,200 students due to the addition of a recently built school. There are now two middle schools within the Groton-Dunstable School District, the ‘South’ school holding 550 students, and the ‘North’ school holding 660 students. As of October 1, 2004, 940 students have enrolled for the 2004-2005 school year. Excluding any population growth due to children moving from another district into the Groton-Dunstable school district, the Middle School capacity would not be reached within three to four years (personal communication with the business manager for the Groton-Dunstable school district).

The elementary schools in the Groton-Dunstable school system include Florence Roche Elementary School in Groton (presently serving 580 students in grades kindergarten through four), Colonel William Prescott Elementary School in Groton (accommodating 220 students in grades one through four), and the Swallow Union Elementary School in Dunstable (servicing approximately 340 students in grades kindergarten through four). The Boutwell Early Childhood Center in Groton currently has three preschool classrooms and one kindergarten classroom with an approximate total of 110 students (Groton-

Dunstable Regional School District website). These schools are already stressed at some locations, and a few may have already reached their capacity (personal communication with the business manager for the Groton-Dunstable school district). Next year there will be approximately 1,244 children aged five to nine in Groton and Dunstable, excluding any children that may move to Groton or Dunstable from other towns (MAPC, 2003). This is approximately 100 more students than are presently enrolled in the three elementary schools serving children at this age level.

## **Section 2—Affordable Housing Goals and Strategies**

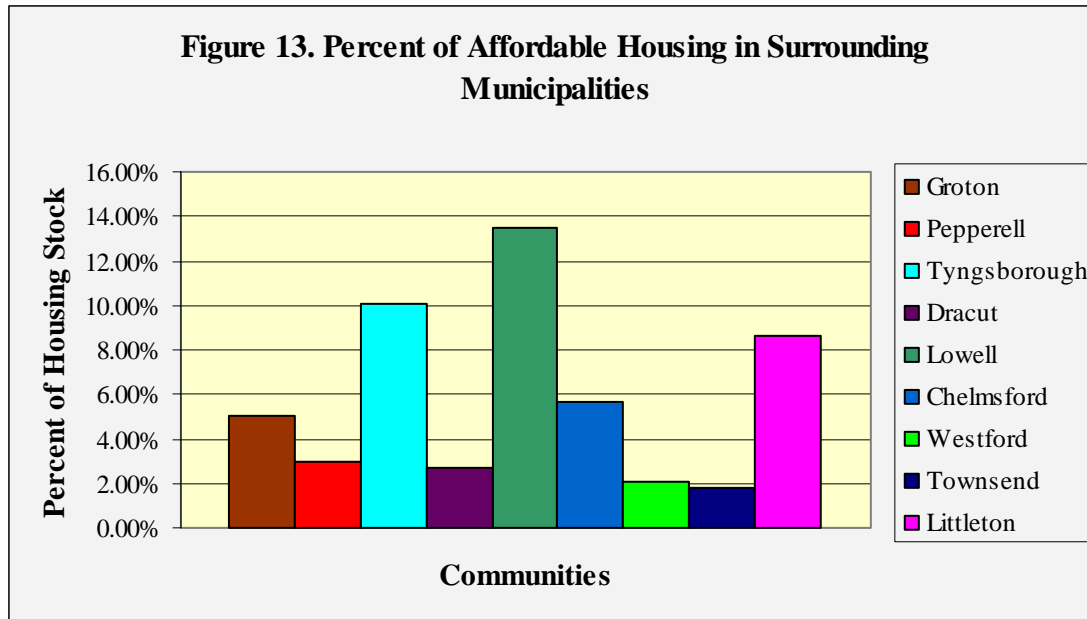
### **GOALS**

The goals of the Town of Dunstable relative to the provision of affordable housing were developed by the Committee using feedback at public forums and guidance from the consultant. These goals are as follows:

- 1) Create affordable units that are compatible in size, scale and architecture with the prevailing rural character of Dunstable through a diverse set of strategies.
- 2) Create units that serve the specific housing needs of the Dunstable community at a pace that will not unreasonably burden municipal facilities or infrastructure.
- 3) Place the Town at the center of all development proposal negotiations to ensure that that affordable housing is consistent with the needs of the community.
- 4) Discourage development that would be damaging to the existing natural resources of the community including the local water supply, wildlife habitat and wetland areas.

### **IDENTIFIED NEEDS**

The Town of Dunstable currently has no subsidized affordable housing (i.e., zero percent of its existing stock is affordable). This statistic lies in notable contrast to adjacent communities (Figure 13), which have anywhere from approximately 2% (Town of Townsend) to just over 13% of existing stock (City of Lowell). The following section builds upon the data developed for Section 1 and presents analyses designed to identify the housing needs of specific demographic groups in the community. These analyses examine both the short- and long-term goals of the community and determine the housing production tools that can be used by the community to achieve its goals.



### *Affordability Gap Analysis*

An affordability gap analysis compares the cost of housing within a community with the incomes of residents and calculates the difference between the two figures. This analysis is a useful indicator of how large the disparity may be between what people earn and what they can afford for housing in a given community. There are several ways to determine this gap at varying levels of detail. For owner-occupied units, a general rule of thumb is that household income should not exceed 30% of home cost. As an example, the most recent median household income for the HUD Metropolitan Statistical Area (MSA) is \$80,000. According to this guideline, a household making the median area income should not pay more than \$266,666 for a home. Since the area median home price in 2000 was just above this value, at \$285,210 (Warren Group, 2004), there was technically very little gap between these households and the homes they could afford in Dunstable.

Although there is a small affordability gap when examining only the median household income against the median home price, this is merely an indicator of conditions in Dunstable. To understand how existing prices compare to HUD affordability income limits, it is first necessary to examine the relationship between incomes and housing prices. Table 6 more accurately illustrates the relationship between income and housing affordability using information gathered from local banks, mortgage calculations and simple assumptions regarding local utility costs. This table shows that a multiplier of 3.1 provides an averaged estimate of what a household can reasonably afford with a given income. The information in this table is used simply to generate an income-to-housing price ratio and does not consider affordable guidelines as part of the calculations. Accounting for affordability, as it is defined by HUD, is performed in Table 7.

**Table 6. Calculating an Income Multiplier to Determine a Reasonable Home Price.**

<b>Down Payment<sup>1</sup></b>	<b>Interest Rate</b>	<b>Loan Term (years)</b>	<b>PMI</b>	<b>Total Estimated Monthly Payment</b>	<b>Suitable Gross Annual Income</b>	<b>Income to Price Ratio</b>
Median House Price (\$285K) <sup>2</sup>						
5% (\$14.3K)	6.0	30	\$234.82	\$2,469	\$98,748	2.9
10% (\$28.5K)	6.0	30	\$111.23	\$2,260	\$90,385	3.2
20% (\$57K)	5.8	30	-	\$1,948	\$77,928	3.7
80% of the Median House Price (\$228K) <sup>2</sup>						
5% (\$11.4K)	6.0	30	\$187.86	\$2,015	\$80,599	2.8
10% (\$22.8K)	6.0	30	\$88.99	\$1,848	\$73,908	3.1
20% (\$45.6K)	5.8	30	-	\$1,599	\$63,942	3.6
50% of the Median House Price (\$143K) <sup>2</sup>						
5% (\$7.1K)	6.0	30	\$117.41	\$1,334	\$53,374	2.7
10% (\$14.3K)	6.0	30	\$83.42	\$1,258	\$50,305	2.8
20% (\$28.5K)	5.8	30	-	\$1,074	\$42,964	3.3
					<b>Average</b>	<b>3.1</b>

<sup>1</sup> General practice in the Comprehensive Permit Application Process assumes no more than a 5% down payment.

<sup>2</sup> The housing prices in this table represent percentages of the 2000 median home price and do not reflect what HUD would consider to be “affordable”.

Using the information developed in Table 6, it is possible to compare the incomes suitable to certain housing prices in Dunstable with the affordability guidelines published by HUD. It is important to note that calculations for affordability will vary under different subsidy programs and with different household sizes. For example, the “low-income” limits published by HUD are generally adjusted by region and therefore usually do not represent a straight 80% of median household income calculation. Furthermore, under typical 40B-eligible subsidy programs such as the Local Initiative Program (LIP) or the New England Fund (NEF), developers are instructed to expand the range of households that can afford these units by pricing them to be affordable to approximately 70% of the area median income (AMI), adjusted to the appropriate household size. As an illustration, Table 7 uses the HUD income limits for a four-person household to demonstrate the difference between the income needed to purchase certain homes in Dunstable and the existing incomes in the region. The comparison clearly demonstrates that housing prices have increased far beyond what typical households in the region can afford.

**Table 7. Comparing Suitable Incomes for Specific Home Prices with HUD Income Affordability Guidelines in Dunstable<sup>1</sup>.**

<b>Housing Price<sup>2</sup></b>	<b>Suitable Income<sup>3</sup></b>	<b>Existing Income Guideline</b>	<b>Income Gap</b>
Median (\$285,000)	\$98,748	\$80,000 <sup>4</sup>	\$18,748
80% of the Median (\$228,000)	\$80,599	\$57,500 <sup>5</sup>	\$23,099
50% of the Median (\$143,000)	\$53,374	\$40,000 <sup>6</sup>	\$13,374

<sup>1</sup> Table 7 should not be used to quantify which income groups in Dunstable are better served by the housing market since those households making moderate incomes would have access to houses priced for low income households, but not vice versa. Rather, the table merely illustrates that housing prices at or below the median in Dunstable are currently out of reach to households in the area.

<sup>2</sup> Uses a straight percentage of the existing median home price (100%, 80%, 50%)

<sup>3</sup> Taken from Table 6, assuming a 5% down payment.

<sup>4</sup> 2004 Lowell Metropolitan Statistical Area (MSA) value

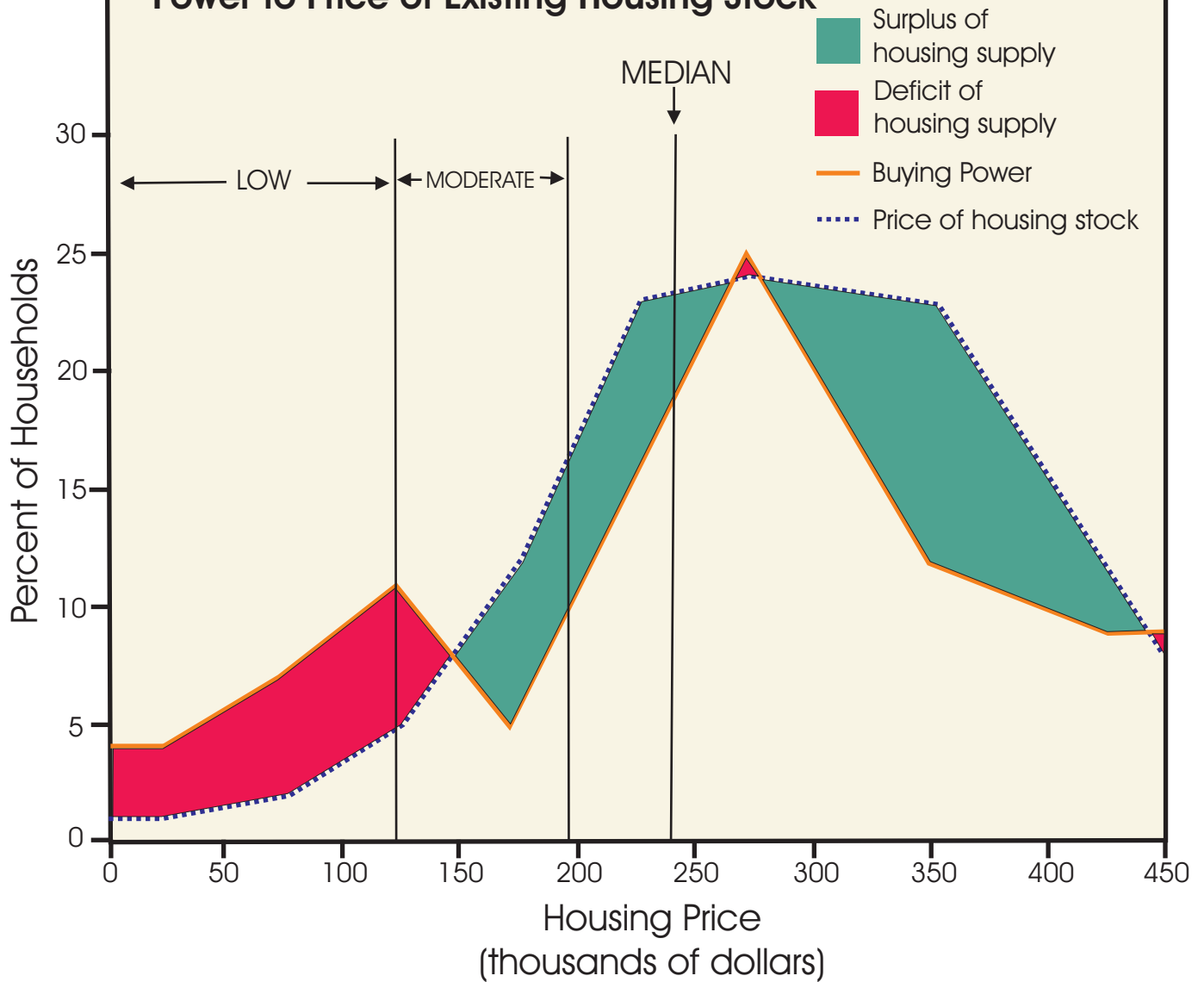
<sup>5</sup> 2004 affordability limits for a four-person “low-income” household

<sup>6</sup> 2004 affordability limits for a four-person “very low-income” household

To expand the analysis further, a more detailed comparison can be developed between the complete income distribution to the full distribution of housing costs. The first step in this analysis is to multiply the existing income distribution (originally graphed in Figure 3) by 3.1 (multiplier calculated in Table 6). These values, which represent what households in Dunstable can reasonably afford, were then graphed against the existing distribution of housing stock (originally graphed in Figure 8). The purpose of this graphical comparison is to see how well the existing “buying power” of the community compares with the price of housing stock for different income groups (Figure 14). In an ideal situation, the two graphs would fit perfectly on top of one another. But where the line graph for housing prices rises well above the line representing buying power, these groups are considered “under-served” and may be targeted as part of the strategic plan.



**Figure 14. Comparison of Existing Residents' Buying Power to Price of Existing Housing Stock**



What this graphical comparison demonstrates is that for those households at the MSA median income level, the housing stock in Dunstable appears to be adequate. This is depicted in green on the graph, where the height of the buying power line is lower than the line representing the number of homes at that price. In other words, the number of homes at this price exceeds the number of households that could afford them. Moving toward more affordable units (to the left of the median), the number of homes well-suited to moderate income households continues to exceed the actual number of these households in Dunstable. This surplus suggests that most of the households making moderate income levels would be well-served by the 2000 housing market.

A review of the most affordable range of home prices on the graph clearly illustrates that the most immediate need relative to affordable housing in Dunstable is for low-income households. The deficit of housing, depicted in red, covers the entirety of the low-income bracket in Dunstable. The lowest range of incomes in the community, representing approximately 20% of the household population, would have access to less than 10% of the existing housing stock.

#### *Housing Needs for Renters*

A close look at the U.S. Census 2000 data for rental units shows a poor relationship between the household incomes of renters and the cost of rental property. Similar to home-ownership analyses, rental units are considered affordable if tenants are paying less than 30% of their household income on the gross rent. Table 8 clearly shows that a significant number of renters in Dunstable, approximately 39%, are paying over this threshold. Of this percentage, all of the households have incomes in what is considered to be below “moderate” levels. In other words, tenants in the lower income brackets demonstrate the highest need for affordable housing.

**Table 8. Renters Households Income as a Percentage of Gross Rent.**

Percent of Income	Household Income (\$1,000's)						
	Less than \$10.0	\$10.0 to \$19.9	\$20.0 to \$34.9	\$35.0 to \$49.9	\$50.0 to \$74.9	\$75.0 to \$99.9	\$100.0 or more
Less than 20%	0	0	0	0	0	0	14
20% to 24%	0	0	6	5	6	0	0
25% to 29%	0	0	0	0	0	0	0
<b>30% to 34%</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>35% or more</b>	<b>14</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Not computed	0	0	0	6	0	0	0
Total	14	6	10	11	6	0	14

Values in **bold** represent renters paying beyond 30% of their household income toward gross rent.

In order to effectively provide affordable housing for renters in Dunstable, demographic data for this group were reviewed for age and household income distribution. Although these analyses often show that the elderly comprise a high percentage of the low-

income/rental population, only 25% of these households were senior citizen occupancies (Table 9). The other 75% of the low-income/rental households had a head-of-household between the ages of 35 and 44. Overall, 14 of the rental households had reported incomes below federal poverty guidelines. This situation, coupled with the competitive rental market in Dunstable, clearly points to an immediate need for rental properties that are affordable to low income households in the community.

**Table 9. Age of Renters and Percentage of Household Income Paid to Gross Rent.**

Percent of Income	Age of Renter (Head-of-Household)						
	15-24	25-34	<b>35-44</b>	45-54	55-64	<b>65-74</b>	75+
Less than 20%	0	0	0	8	0	6	0
20% to 24%	0	11	0	6	0	0	0
25% to 29%	0	0	0	0	0	0	0
<b>30% to 34%</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>35% or more</b>	<b>0</b>	<b>0</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>0</b>
Not computed	0	0	6	0	0	0	0
Total	0	11	24	14	0	12	0
Percent of renters	0%	18%	39%	23%	0%	20%	0%
Percentage devoting 30% or more of income to gross rent	Not renting	0%	75%	0%	Not renting	25%	Not renting

Values in **bold** represent renters paying beyond 30% of their household income toward gross rent.

### *Housing Needs for Seniors and People with Disabilities*

One of the goals set forth by the Dunstable Affordable Housing Committee makes a clear commitment to providing housing for diverse demographic groups, including seniors and people with disabilities. The population projection data depicted in Figure 1 show that the senior population in Dunstable will probably increase considerably over the next 10 to 20 years. These trends are consistent with many communities in the Commonwealth as the “baby-boomer” generation begins to enter the “senior citizen” demographic.

A closer review of Figure 4 further reveals that senior households (here defined as having a head-of-household at age 55 or over) make up the majority of households having an income at or below moderate levels. This number represents almost 50% of the total senior household population and nearly 14% of all households in Dunstable (U.S. Census, 2000). Based on these statistics, it is reasonable to assume that a rise in the senior population will also result in an increase in the number of seniors having low to moderate incomes. Affordable housing development strategies will therefore have to consider the probable increase in this demographic group in order to adequately meet the needs of the community.

### *Housing Needs for First-Time Homebuyers*

First-time homebuyers are generally categorized by age and include the general age groups between 25 and 44. It is important for any municipality to sustain a market for these households as younger residents contribute to the overall vibrancy of a community. These households are likely to invest more money and time in communities due to an active lifestyle, but can also add to the demand for better facilities and technology. These households are also more likely to produce children, which adds another level of demand for community schools, recreational facilities and safety amenities. Although these demands on facilities may pose short-term stresses on municipal infrastructure, they also greatly contribute to the long-term economic viability of the community and create more of a “sense of place” among residents. The focus for Dunstable should be to balance the contributions of this demographic group with the potential financial demands they can place on the community. This will be best achieved by providing clear affordable opportunities in quantities that can be managed by the Town.

Population predictions for the Town of Dunstable by age group show varied trends for the four age sub-groups that are within the larger first-time homebuyer category (MAPC, 2003). Over the full term of the predictions, the population of this group increases, more notably in the 25 to 34 age group. These increases, however, do follow a short-term decrease in the same sub-groups. Looking at the income of these age groups, most first-time buyers have incomes not far from the median value and are therefore generally well-served by the housing market as of 2000. From a purely statistical standpoint, these predictions suggest that the demand for first-time homebuyer units may be better targeted as a long-term strategy. However, it is important to note that the median home sales price reported by the Warren Group has increased from \$269,900 to \$412,000 in just under five years. This represents an average annual increase of 8.9% in home sales price, a figure that has probably outpaced the rise in household incomes by a wide margin and created more of an affordability gap than what is shown by U.S. Census 2000 figures. In other words, the first-time homebuyer population in Dunstable today probably has fewer choices than it did at the start of 2000.

Along with the statistics associated with age and income, it is important to consider the goals of the community relative to first-time homebuyers. When a community is trying to attract a particular demographic group, it is necessary to look beyond these statistical demands and to look for opportunities to draw these demographic groups to the community. Economically speaking, the Town of Dunstable is situated in a region of the Commonwealth that has already experienced significant levels of economic development and stands to make even larger gains in the future. Its proximity to Nashua and the Greater Boston economies greatly increases the odds that residents will have access to viable long-term employment. This promising future, coupled with the rural charm of the community, potentially makes Dunstable a prime area for first-time homebuyers to consider. These regional factors lay the groundwork for strategies that will be designed to create a more immediate market for first-time homebuyers while adding subsidized units of moderately priced homes to the Town’s inventory.

## *Summary of Needs*

Dunstable currently has no subsidized affordable housing. Although the analysis of the market as of 2000 suggests that households making moderate to median incomes were well served, the dramatic increase in housing prices since then suggests that the market may have become less affordable in this income range. Low-income households were notably underserved, as is demonstrated by both the affordability gap analysis and a close examination of the rental market. Senior citizens comprise a significant number of households at or below moderate levels and population projections suggest that there will be a significant long-term demand for affordable senior housing and housing suited to people with disabilities. First-time homebuyers represent an important target group for the community and economic conditions in the region suggest that Dunstable would be an ideal location for many of these households to look for their first ownership opportunity. Dunstable will want to ensure that affordable opportunities are provided for these households in ways that will be consistent with the community's needs and can be accommodated by its infrastructure.

## HOUSING STRATEGIES

The AHSC, along with their consultant, examined several different potential strategies to satisfy the housing needs identified in previous analyses. The myriad of strategies considered can be grouped into three general categories: 1) Production-oriented strategies designed to add new units of rental or owner-occupied units; 2) Conversion-oriented strategies designed to add existing units of housing to the affordable inventory; and 3) Maintenance strategies designed to track the developing inventory and identify new opportunities as they arise.

Integral to the development of these strategies are recent planning efforts that are already underway in Dunstable. The two most notable examples are an upcoming Comprehensive Permit application for 30 units of apartments and the development of the Mixed Use District (MUD) near the center of Town. These efforts present clear opportunities to satisfy specific housing needs in a pro-active and efficient manner and will be discussed in greater detail below. Using these production-oriented strategies in the early phases of the plan will allow for the Town to begin implementing more long-term policies and bylaw changes that can contribute to the affordable housing stock several years further along the overall timeline.

In almost all of the strategies described below, the Town of Dunstable will need to facilitate partnerships designed to provide technical assistance, consultation during development, funding for subsidies, and monitoring of the inventory and sale of affordable units. Table 10 provides a basic list of the different public, non-profit, and private entities that will likely play a significant role in the future development of affordable housing in Dunstable.

### *New Development of Apartment Units*

Perhaps the most effective and efficient way to address the affordable housing deficit in Dunstable is through collaboration with private developers who have experience in this market. To that end, discussions have already commenced (as of the drafting of this report) with one developer who is well-positioned to meet the more immediate housing needs of the community. As identified in the Needs Analysis, the U.S. Census reported that many households were paying beyond what is considered “affordable” for rental housing in Dunstable. The age demographics of this group were mixed and suggest that developing senior rental units alone would not satisfy this need in the community. Dunstable is committed to pursuing low-income units as part of early rental development in response to the low-income housing needs clearly identified in the previous analyses.

At least one site, at the crossing of Salmon Brook and Pleasant Street, has been identified for the construction of a 30-unit apartment complex through the Local Initiative Program (LIP) under Chapter 40B (Figure 15). Discussions with the developer are still in preliminary stages; however, there is a commitment on both the part of the Town and the developer to pursue this project in earnest. The AHSC has set a 6-year target for rental unit development at 50 units, at least 25% of which will be set aside as “affordable”. Toward the end of that 6-year horizon, during the development of the Mixed Use District, the community may consider setting aside some of these units as “senior housing” depending on the success of the bylaw provisions discussed below. Between the pending Comprehensive Permit Application and the RFP for the MUD, the 50-unit target should be easily achieved. Based on existing development trends in the community (assumed to be 25 units of market rate housing per year), this level of rental development should raise the Town’s affordable housing inventory to just under 5%.

### *New Development of Single or Multi-Family Dwellings*

Along with new rental units, the development of new single family or multi-family dwellings will play an integral role in achieving the affordable housing goals in Dunstable. These units will provide opportunities for the children of current residents in the community as well as for prospective first-time buyers in the region. Because the majority of residential area in Dunstable is zoned with a 2-acre minimum lot size, it is unreasonable to expect conventional development to play a major role in the production of affordable detached dwellings. Similar to the current discussions regarding the 30-unit apartment complex, the Town will consider using the Comprehensive Permit Application process to explore potential development on Town-owned parcels in the future.

**Table 10. Potential Participants in Creating and Supporting a Local Housing Partnership.**

<b>Public or Quasi-Public Agencies</b>	
Town of Dunstable	As the centerpiece for any partnership, the Town should play the lead role in identifying target units for conversion, identifying sites suitable for new development, and shaping proposals from private developers to suit the scale and character of the community.
Massachusetts Department of Housing and Community Development (DHCD)	DHCD is the lead state agency for issues surrounding affordable housing in Massachusetts. This agency provides technical support for developing housing both within and outside of Chapter 40B through its “toolkit”, is the overseeing agency for the Housing Appeals Committee (HAC), and reviews/certifies Planned Production plans from individual communities.
Massachusetts Housing Partnership Fund (MHP)	A quasi-public state agency that can provide various forms of financing including tax credit financing, low-interest loans to developers, and subsidies for improvements. Aid is available for both rental and home ownership projects.
Community Economic Development Assistance Corporation (CEDAC)	As an economic development agency, CEDAC provides a wide range of support related to housing initiatives, workforce development and childcare facilities. Specific to housing, CEDAC serves as the underwriter for loans administered by DHCD to provide seed money on affordable housing projects. They also provide expert consultation to communities or non-profits throughout the development process.
MassHousing	Serving as the affordable housing bank for the state, MassHousing provides loans below market rates to facilitate the development of both rental and home-ownership units. MassHousing is often the subsidizing agent for Chapter 40B permit applications.
MassDevelopment	A quasi-public agency that provides professional planning and development services as well as financial backing for development projects including housing.

**Table 10. (continued)**

<b>Non-Profit Organizations</b>	
Citizens Housing and Planning Association (CHAPA)	State level umbrella agency that advocates for housing development and preservation. Specializes in developing coalitions between private and public agencies toward advancing local housing initiatives.
Local Housing Authority	A local authority is generally comprised of a Board of Directors appointed by the Town and a lead housing agent who serves as the staff expert in issues surrounding affordable housing. A more detailed description of this individual's duties is provided in the final section of this plan.
<b>Private Entities</b>	
Banks	The obvious role of the bank is to provide mortgages for new or converted units within the community. Dunstable should seek out banks that are familiar with federal and state level subsidy programs and who have a history of getting involved with successful housing initiatives.
Developers	Similar to the approach with banks, Dunstable should seek out developers with a proven history of cooperating with local agents toward developing housing that is appropriate to the needs of communities



The most obvious candidate for developing affordable detached units is the newly delineated Mixed Use District (MUD). This tract of Town-owned land lies adjacent to the U.S. Post Office on Pleasant Street (Figure 15) and covers approximately 28 acres, perhaps half of which are upland. To determine the “highest and best use” for this area, the Town appointed a MUD Committee to discuss the long-term opportunities and constraints of the site. Although a specific mix of uses has yet to be identified, there is consensus among the committee members that affordable housing will be included. The degree to which rental units are part of the mix will depend on the success of the previously mentioned 30-unit Comprehensive Permit Application. By the summer of 2005, however, the MUD Committee will have developed a Request for Proposals (RFP) that clearly describes the mix of uses and the objectives associated with this district and will place the development into the bidding process.

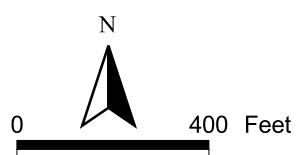
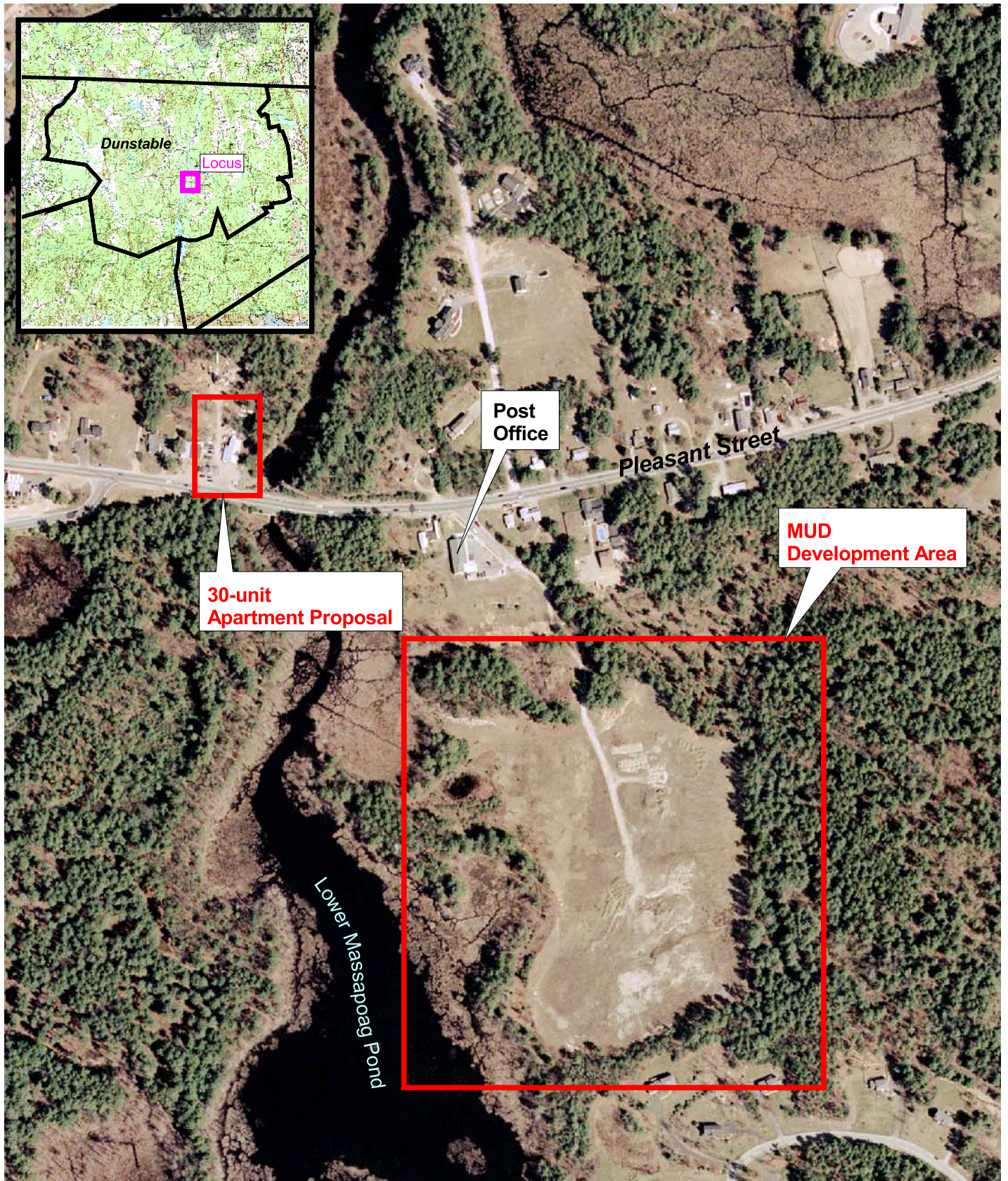
Once the MUD is developed, it is estimated that the community will have achieved an affordable housing inventory approaching 7% (see implantation timeline below). After this milestone, Dunstable will look to identify at least one more town-owned parcel suitable for housing. As an example, a 40-acre tract of open space that currently exists on River Street could be considered. However, this phase of the Planned Production plan begins during the ninth year of implementation, and many factors will influence where the community chooses to develop more housing. Most notably, Dunstable currently has approximately 2,800 acres of land in 65 parcels within the various Chapter 61 programs (Dunstable Open Space and Recreation Plan, 1998). As these parcels come to the market, the Town has historically taken a proactive role in securing funds for acquisition. Depending on which areas come to the market during the coming decade, the community may find areas highly suitable for the development of affordable housing.

### *Zoning Bylaw Amendments*

The AHSC and HW looked closely at the existing Zoning Bylaw to identify potential opportunities for amending the bylaw to create more affordable housing in the community. Five potential amendments were identified that would involve varying degrees of change to the existing bylaw. For example, one change might involve simply changing a numeric threshold while another would involve a detailed redrafting of existing language in several sections of the bylaw.

The potential changes identified by the AHSC below will require a public outreach effort to fully explain the different strategies and their relative benefit to the community. During this time, a more detailed assessment of the Zoning Bylaw as a whole will take place in which any conflicts between new provisions and the existing code will be identified. The Planning Board will also need to determine if selected sections of the *Dunstable Master Plan* should be re-drafted to lay a strong foundation for these zoning amendments. Once the AHSC understands the degree to which these different amendments are supported or opposed, the language for selected amendments will be drafted and brought to Town Meeting. This process is expected to require at least two years.





Horsley Witten Group  
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www.horsleywitten.com



Areas for Future  
Housing Development  
Dunstable, MA

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J:\4142 Dunstable\_Housing\GIS\  
dunstable\_locus.apr

Figure 15



Therefore, in the interest of developing a conservative Planned Production timeline, additions to the existing affordable housing stock that would result from these changes are not accounted for until the fourth year of plan implementation.

#### 1) Apartments within Single-Family Residences

Under Section 6.2 of the Zoning Bylaw, the Town of Dunstable allows for apartments to be created within existing single-family units with separate entranceways, bathroom and kitchen facilities provided these units are occupied by a family relative (related by blood or marriage). The Town of Dunstable could consider removing the family restriction currently in the bylaw and requiring affordability restrictions to be placed on the rental through a binding regulatory agreement. A sample regulatory agreement for rental property is attached in the final Section of this plan.

#### 2) Senior Residential Multi-Family Development

Senior Residential Multi-Family Development (SRMD) is allowed by Special Permit, as may be granted by the Planning Board, under Section 6.7 of the existing bylaw. These provisions describe a variety of thresholds and density bonuses that may apply to senior housing proposals including, but not limited to:

- 50-acre site minimum;
- Minimum open space requirements are included and will change from one site to the next. Based on the existing language, approximately two-thirds of a site will be set aside as open space;
- 25% potential total increase in the number of units allowed under conventional zoning;
- Density bonuses awarded based on number of affordable units or amount of open space included in the proposal;
- A minimum of 5% of the units shall be affordable for households making “low” to “median” incomes; and
- Affordability restrictions shall be placed on units for a minimum of 30 years.

Based upon the goals of the community relative to affordable housing, HW identified several potential changes to this bylaw that would make it stronger and potentially more effective in the community:

- Decrease the minimum site requirement to reduce the potential investment needed to purchase land for these developments. A smaller scale parcel would also reduce the size of the development and allow for piecemeal, lower impact development to take place. Based on the open space requirements, a reasonable threshold the community may consider is 25 acres.
- Define “affordable” as units set aside for households making below 80% of the HUD Metropolitan Statistical Area median income. This will ensure that

these units can be counted toward the community's affordable housing inventory under Chapter 40B.

- Consider raising the minimum affordable unit count to 10%. This percentage is still significantly lower than the Chapter 40B threshold and should not encourage developers to forego the local bylaws in favor of a Comprehensive Permit application.

### 3) Inclusionary Bylaw as Related to Standard Subdivisions

The analysis of building permit trends in Dunstable showed that subdivision activity tends to mirror national economic trends. This is expected in a community with two-acre zoning and relatively high property values. Although subdivision activity has been low in recent years, Dunstable should expect to see increases as the economy accelerates. In anticipation of future subdivision activity, Dunstable should consider the use of inclusionary zoning to help increase the inventory of local affordable housing. When attached exclusively to subdivision activity, an inclusionary bylaw generally requires that a fixed percentage or ratio of affordable housing is provided relative to the market rate stock.

Because subdivisions in Dunstable are not likely to contain large amounts of units owing to the two-acre minimum lot size required in most of the town, this ratio should be small. A reasonable requirement might be, for example, one affordable unit for every five proposed market rate units. Another example might be a 10% affordability requirement with any fractions of units being rounded up to the nearest integer for developments of five units or more. A well-written affordable housing bylaw will also contain provisions regarding the timing of construction for affordable versus market units and a discussion of re-sale restrictions. Other optional provisions might include those for providing affordable housing "off-site" or those regarding "fees-in-lieu of" affordable housing to a fund specifically designated for generating affordable housing in the community. By way of example, the affordable housing bylaw developed for the Town of Duxbury is attached to this plan.

### 4) Inclusionary Zoning as Related to Open Space Development

It is important to note that the Town of Dunstable Zoning Bylaw contains provisions for Open Space Development, which may also provide opportunities for inclusionary provisions. Open Space Development (Section 6.6 of the bylaw) is subject to Special Permit approval by the Planning Board and can allow developers to reduce the standard dimensional requirements associated with residential development. These reductions are allowed on several contingencies; most notably that 35% of the site is set aside for open space.

As the community explores the potential use of inclusionary zoning as part of their efforts to increase the stock of affordable housing, the Open Space Development provisions may provide a unique opportunity for the development community.

Several studies have shown that Open Space Development, sometimes called “Cluster Development” or “Conservation Design”, decrease development costs and create properties that have a higher rate appreciation than those of conventional subdivisions (Belansky, et al., 2000; Lacy, 1990). From a financial standpoint, therefore, Open Space Development creates a higher financial benefit to the Town, the homeowner, and the developer. As developers stand to increase their profits due to lower construction costs, communities have an opportunity to require the inclusion of affordable units without heavy opposition from the development community.

Based on these findings, the AHSC will actively pursue the development of inclusionary provisions that would be associated with the existing Open Space Development bylaw. These provisions would be similar to those described above (as related to standard subdivisions), and would require a fixed percentage of units to be set aside as available to households earning below 80% of the HUD Metropolitan Statistical Area median income. Although discussions at public forums and with various Town agencies will ultimately determine the mandatory set-aside value for affordable units, the AHSC supports a base value of 10%. Similar to the SRMD provisions, the Committee will explore the feasibility of providing density bonuses for those proposals that offer beyond 10% affordability.

#### 5) Accessory Dwellings

Existing provisions in the Dunstable Zoning Bylaw allow for accessory uses on single-family lots within the R-1 Single Family Residence District. These structures are allowed “provided in all cases that such accessory uses are entirely incidental and secondary to the primary permitted uses on said premises.” (Section 6-1(e)). Uses in this “accessory” category include, but are not limited to, private garages, stables, greenhouses, and barns. With the minimum lot size in this district set at two acres, and the rural nature of the town, this provision recognizes that many households will want to use this extra space to enhance their quality of life through specific activities or storage areas.

Historically, Dunstable has allowed for accessory dwellings to be developed above accessory structures such as garages. Dunstable should consider amending the Zoning Bylaw to more specifically describe accessory dwellings and the conditions under which they can be allowed. Specifically, a cap could be placed on the granting of these permits each year to ensure that the granting authority has adequate resources to review the applications and also so that development occurs at a reasonable pace. Most importantly, as with the in-house apartment units described in amendment #1 above, all accessory dwellings would be required to have affordability restrictions placed in a regulatory agreement with the Town.

## *Converting Existing Housing Stock to Affordable Units*

The housing demographic analysis performed in Section 1 demonstrates that there is a significant stock of homes in Dunstable that would qualify as low to moderate income housing if formal restrictions were placed on the deeds. With that in mind, the AHSC recognizes the opportunity to increase the affordable housing inventory in the community without having to add new units. Although this strategy will not likely produce a large percentage of the community's overall target, these piecemeal additions are particularly important to a rural community as they can help to alleviate development pressure and also maintain homes for residents in need of financial assistance.

To begin an effective program for converting existing market rate homes to affordable units, the community will need to engage in a three-step process: 1) identify the types of homes in the community that should be targeted for conversion; 2) identify potential sources of funding for either subsidizing or "buying down" units (discussed below in more detail); and 3) forming strategic partnerships with local groups to perform outreach to target households. These steps are not necessarily sequential and represent an iterative process that will take place over the course of two years. Furthermore, once funding sources are identified, it may take another two years to acquire the funds or develop the necessary public/private partnerships. As a result, the conservative implementation timeline for this plan does not show unit conversion taking place until the sixth year.

### 1) Target Units

Homes or units that are generally targeted for conversion fall into three basic categories. The first category consists of existing rental units that could be subsidized by the Town or some other non-profit agency toward making them affordable to people of low to moderate income levels. This may involve providing a monthly subsidy to the landlord or may also mean providing the first month, last month and security payments that many people may not be able to afford. In either case, the landlord would sign a binding legal agreement stipulating that the unit will only be rented to individuals or families of low to moderate income.

A second target for households in the community is single-family homes that would currently sell at or near affordable levels. Although these homes, based on their value, might already qualify as affordable under state guidelines, they lack the subsidizing agent required to formalize the process. In addition to a subsidizing agent, these properties would require a deed restriction stipulating that re-sale of the property would be done so at a price affordable to households making at or below moderate income levels (80% of the area median). These deed restrictions could be purchased by the Town using a formula that would calculate the difference between the market sale and the restricted sale price over a fixed period of time.

A third target for conversion is multi-family homes that are placed on the market and may or may not be priced close to affordable levels. Since these buildings offer more

than one unit of housing, they are particularly attractive for conversion efforts. Dunstable currently has approximately 11 two-family homes (U.S. Census, 2000), which represent 22 potential units that could be counted in the community's affordable housing inventory. One of the most effective ways to convert these units is to buy them outright as they come up for sale, place the deed restriction on the home and then sell it again at an affordable price. In other cases, the house will be sold to a local housing authority who in turn manages the units as affordable rentals.

## 2) Sources of Funding

Regardless of the targeted units in a conversion-oriented effort, a community must have access to funding in order to subsidize or buy existing stock. The Town of Dunstable will consider several different funding sources for these efforts including public funds, such as may be raised by adopting the Community Preservation Act (CPA), or through public/private partnerships designed to leverage funding for home purchases.

In the case of the CPA, preliminary calculations show that the community could collect close to \$163,000 on an annual basis before any matching funds were appropriated by the Commonwealth. This amount is based on the most recent assessed value for residential property in the community and assumes the full 3% tax surcharge. It is important to note that this value could increase or decrease depending on which properties or households the community may choose to exempt from the surcharge. After state-level matching and the mandatory allocation of funds to open space and historic resources, the community would have approximately one quarter of a million dollars available for spending on issues related to affordable housing each year. A more detailed description of what CPA is and how it works can be found at [www.communitypreservation.org](http://www.communitypreservation.org).

Although the use of CPA funds is becoming more common in Massachusetts, historically more affordable housing has been developed or converted through public/private partnerships with the assistance of non-profit housing organizations. Several of the agencies listed in Table 10 can provide assistance relative to targeting and financing the conversion of existing market rate housing into affordable units. For example, the MassHousing Partnership Fund has been used to finance over 11,000 units of housing since 1990 and provides access to programs such as the Soft-Second mortgage and several rental subsidies. Also, the Community Development Block Grant program, administered by HUD, can provide funding for acquisition as it has in communities like Arlington, MA. As discussions in the community continue to evolve relative to targeting specific units for conversion, the appropriate agencies will be selected according to their resources and expertise.

### 3) Local Outreach

The success of these conversion-oriented efforts depends largely on the level to which residents are confident in the ability of the Town to provide adequate and equitable funding for individual or multi-family homes. Simply put, if residents do not trust that these initiatives can provide fair compensation for deed restrictions or home sales, no one will participate. The AHSC is therefore committed to continuing outreach efforts with local groups that can build trust between residents and the Town. Local groups or agencies that will be approached include the Council on Aging, the Groton-Dunstable Alliance for Youth, the Dunstable Evangelical Congregational Church, Dunstable Seniors, and the Dunstable Grange. Involving these organizations in discussions of unit conversion provides organized access to a wide audience and should simultaneously garner support and uncover opportunities for conversion.

### IMPLEMENTATION TIMELINE

As of 2004, the Town of Dunstable had 1,044 units of housing. This number was consistent with building permit trends which showed that an average of 24 new units were developed annually from 1996 to 2003 (Figure 5). Based on this average growth rate, the Town can expect to have just over 1,300 units of housing ten years from now (2015). With that in mind, the AHSC has developed a 10-year implementation strategy designed to exceed the estimated 133 units that will be required to meet their 10% threshold under Chapter 40B. The strategies identified above will be implemented in phases designed to exceed the annual increase target of 0.75% with strategic approvals of new construction as well as piecemeal implementation of smaller scale zoning amendments and conversion oriented strategies. Table 11 below shows the 10-year implementation timeline and how the different strategies are expected to increase affordable housing stock over the coming decade.

**Table 11. Housing Strategies Implementation Timeline.**

Strategy	Year of Implementation									
	1	2	3	4	5	6	7	8	9	10
Pleasant Street Apartments	30 Units									
Mixed Use District Housing					40 Units <sup>1</sup>					
Housing on Town-Owned Property									35 Units	
Zoning Bylaw Changes				14 Units <sup>2</sup>						
Existing Unit Conversion						18 Units <sup>3</sup>				
Total	137 Units									

<sup>1</sup> Will likely contain an even mix of approximately 20 rental and 20 ownership units.

<sup>2</sup> Assumes an average of two units per year over the first seven years.

<sup>3</sup> Assumes an average of three units per year over the first five years.



It should be noted that the timeline presented in Table 11 demonstrates a strong reliance on production oriented strategies with a mix of rental and home ownership units. This inclination results from the understanding that new development is the most effective way to address the existing affordable housing issues in Dunstable. As long as the community takes an active role in identifying land, developing partnerships and communicating their needs to developers, Dunstable should have little difficulty cultivating an affordable housing stock that is well-suited to their community. The timeline illustrates a schedule that can achieve three basic goals: 1) Satisfy the housing needs of the community; 2) Satisfy the thresholds set forth under Planned Production and Chapter 40B; and 3) Develop housing at a pace that can be accommodated by the community's infrastructure and facilities.

The implementation schedule shows that Dunstable is committed to achieving the state threshold of 10% within a 10-year planning horizon. However, the AHSC strongly acknowledges that meeting the 10% statutory threshold does not necessarily mean that the housing needs of the community will have been met. The clear commitment to pursuing zoning amendments and the Community Preservation Act acknowledges that the Town should have policies extending beyond the 10-year planning horizon presented here. Any significant changes to the overall approach will be submitted as an amendment to this Planned Production plan.

### Section 3—Description of Use Restrictions and Administration

#### DESCRIPTION OF USE RESTRICTIONS

As described in Section 2 of this plan, the Town of Dunstable will implement a variety of strategies toward increasing the stock of affordable housing within the community. The AHSC understands that a diverse approach greatly increases the potential for success and is therefore committed to pursuing both production and conversion-oriented strategies using both public resources and private partnerships. To maintain and track the stock of affordable housing in Dunstable, the community will require adequate documentation of the use restrictions associated with each unit and some form of administering agent to maintain these records and annually apply for certification under this Planned Production plan. Table 12 provides a summary of the use restrictions that would be applied to units created by the different strategies discussed in Section 2.

**Table 12. Summary of Housing Strategies and Associated Use Restrictions.**

<b>Housing Strategy</b>	<b>Associated Use Restriction</b>
New Development	
30-unit Apartment Building	Regulatory agreement with Town
MUD Housing	Deed restrictions*
Housing on Town-Owned Land	Deed restrictions*
Zoning Bylaw Amendments	
In-House Apartments	Regulatory agreement with Town
SRMD Housing	Deed restrictions*
Inclusionary Zoning (standard or Open Space Development)	Deed restrictions*
Accessory Dwellings	Regulatory agreement with Town
Conversion of Existing Units	
Rental Subsidy	Regulatory agreement with Town
“Buy Down” of Existing Housing	Deed restrictions*

\*All deed restrictions for ownership and rental properties will be “in perpetuity”.

Discussions with Christine Pude of the Westford and Groton Housing Authorities were very useful throughout the development of this plan, particularly with regard to administrative issues such as inventory, certification and use restriction. Ms. Pude was able to provide several examples of either regulatory agreements or deed riders that she has used successfully in both Towns. One example of each is attached to this plan along with a third example used in the City of Newton for elderly housing.

## DUNSTABLE HOUSING AGENT OR AUTHORITY

As the inventory of affordable housing increases in volume and diversity in Dunstable, it will become necessary to create a local housing agent and perhaps a larger Housing Authority to administer this process. An agent will have at least seven years of experience with housing in Massachusetts and will be able to perform the following duties at a minimum:

- manage rental properties;
- create housing lotteries with marketing techniques that satisfy federal and state requirements;
- maintain an inventory of affordable housing;
- develop housing partnerships with private entities that facilitate acquisition funds and new development that is consistent with community character;
- Coordinate with local boards and commissions on the allocation of municipal funds for housing subsidies or in the planning of new development;
- monitor sales of deed restricted homes; and
- request annual certification from DHCD

Although the Town has yet to decide which type of administering body or agent they will institute, discussion with the Executive Director of the Groton and Westford Housing Authorities suggest that she would have capacity to administer Dunstable's program. Discussions with the Selectmen, other municipal agencies and the community as a whole will determine exactly which administrative structure will be pursued and how positions will be filled.

## REFERENCES and RESOURCES:

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Fletcher, Liz. *Dunstable Open Space and Recreation Plan*. January 1998.

Lacy, Jeff. *An Examination of Market Appreciation for Cluster Housing for Permanently Protected Open Space*. Center for Rural Massachusetts, University of Massachusetts, Amherst. August 1990.

John Brown Associates, Bluestone Planning Group and David J. Friend. *Dunstable Master Plan*. April 1999.

MAPC Population Forecasts. March 2003.

[http://www.mapc.org/data\\_gis/data\\_files/BaselinePopulationForecasts.pdf](http://www.mapc.org/data_gis/data_files/BaselinePopulationForecasts.pdf)

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## **ATTACHMENT A**

Sample Inclusionary Bylaw drafted for the Town of Duxbury, MA.

## **INCLUSIONARY HOUSING (Town of Duxbury, Prepared by J. Witten)**

### **560.1 Purpose and Intent**

The purpose of this bylaw is to outline and implement a coherent set of policies and objectives for the development of affordable housing in compliance with the Duxbury Comprehensive Plan, G.L. c 40B sec. 20-23 and ongoing programs within the Town to promote a reasonable percentage of housing that is affordable to moderate income buyers. It is intended that the affordable housing units that result from this Bylaw be considered as Local Initiative Program (LIP) dwelling units in compliance with the requirements for the same as specified by the Department of Community Affairs, Division of Housing and Community Development and that said units count toward the Town's requirements under G.L. c. 40B, sec. 20-23.

### **560.2 Definitions**

Affordable housing unit. A dwelling unit available at a cost of no more than 30% of gross household income of households at or below 80% of the Plymouth County median income as reported by the U.S. Department of Housing and Urban Development, including units listed under G.L. c 40B sec. 20-23 and the Commonwealth's Local Initiative Program.

Qualified affordable housing unit purchaser. An individual or family with household incomes that do not exceed 80% of the median income, with adjustments for household size, as reported by the most recent information from the United States Department of Housing and Urban Development (HUD) and/or the Massachusetts Department of Housing and Community Development (DHCD).

### **560.3 Applicability**

Division of Land. This Bylaw shall apply to the division of land into six (6) or more lots, and shall require a special permit from the Planning Board under Section 530 or Section 540 of the Zoning Bylaw. A special permit shall be required for land divisions under G.L. c. 40A sec. 9 as well as for "conventional" or "grid" divisions allowed by G.L. c. 41 sec. 81-L and sec. 81-U, including those divisions of land that do not require subdivision approval.

Multiple Units. This Bylaw shall apply to the construction of six (6) or more dwelling units in accordance with Section 700 of the Zoning Bylaw, whether on one or more contiguous parcels, and shall require a special permit from the Board of Appeals.

### **560.4 Mandatory Provision of Affordable Units**

The Planning Board or Board of Appeals shall, as a condition of approval of any development referred to in Sections 560.3.1 and 560.3.2, require that the applicant for special permit approval comply with the obligation to provide affordable housing pursuant to this Bylaw and more fully described in Section 560.5.

### **560.5 Provision of Affordable Units**

The Planning Board or Board of Appeals shall, deny any application for a special permit for development under Sections 530, 540, and 700, and this section if the applicant for special permit approval does not agree that:

1 At least ten (10) percent of the lots in a division of land or units in a multiple unit development subject to this Bylaw shall be established as affordable housing units in any one or combination of methods provided for below. Fractions of a lot or selling unit shall be rounded up to the nearest whole number, such that a development proposing six (6) dwelling units shall require one affordable unit, a development proposing eleven (11) dwelling units shall require two affordable units and so on.

Constructed or rehabilitated on the locus subject to the special permit;

Constructed or rehabilitated on a locus different than the one subject to the special permit see Section 560.9);

An applicant may offer, and the Planning Board or Board of Appeals, in concert with the Board of Selectmen, may accept, donations of land in fee simple, on or off-site, that the Planning Board or Board of Appeals determines are suitable for the construction of affordable housing units. The value of donated land shall be equal to or greater than the value of the construction or set-aside of the affordable units. The Planning Board or Board of Appeals may require, prior to accepting land as satisfaction of the requirements of this Bylaw, that the applicant submit appraisals of the land in question, as well as other data relevant to the determination of equivalent value;

An equivalent fees-in-lieu of payment may be made (See Section 560.12, below.

The applicant may offer, and the Planning Board or Board of Appeals may accept, any combination of the Section 560.5.1(a)-(d) requirements provided that in no event shall the total number of units or land area provided be less than the equivalent number of value of affordable units required by this Bylaw.

#### **560.6 Provisions Applicable to Affordable Housing Units On- and Off-site**

Siting of affordable units - All affordable units constructed or rehabilitated under this Bylaw shall be situated within the development so as not to be in less desirable locations than market-rate units in the development and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

Minimum design and construction standards for affordable units - Affordable housing units within market rate developments shall be integrated with the rest of the development and shall be compatible in design, appearance, construction and quality of materials with other units.

Timing of construction or provision of affordable units or lots - Where feasible, affordable housing units shall be provided coincident to the development of market-rate

units, but in no event shall the development of affordable units be delayed beyond the schedule noted below:

Market-Rate Unit % Affordable Housing Unit%

Up to 30% At least 10%

Up to 50% At least 30

Up to 75% At least 50%

75% plus 1 unit At least 70%

Up to 90% 100%

Fractions of units shall not be counted.

**560.7 Local Preference** - The Planning Board of board of Appeals shall require the applicant to comply with local preference requirements, if any, as established by the Board of Selectmen.

**560.8 Marketing Plan for Affordable Units**

Applicants under this Bylaw shall submit a marketing plan or other method approved by the Planning Board of Board of Appeals, to be Planning Board or Board of Appeals for approval, which describes how the affordable units will be marketed to potential homebuyers. This plan shall include a description of the lottery or other process to be used for selecting buyers.

**560.9 Provision of Affordable Housing Units Off-Site**

As an alternative to the requirements of Section 560.5.1(a), an applicant subject to the Bylaw may develop, construct or otherwise provide affordable units equivalent to those required by Section 560.5 off-site. All requirements of this Bylaw that apply to on-site provision of affordable units, shall apply to provision of off-site affordable units. In addition, the location of the off-site units to be provided shall be approved by the Planning Board or Board of Appeals as an integral element of the special permit review and approval process.

**560.10 Maximum Incomes and Selling Prices: Initial Sale**

To ensure that only eligible households purchase affordable housing units, the purchaser of an affordable unit shall be required to submit copies of the last three years' federal and state income tax returns and certify, in writing and prior to transfer of title, to the developer of the housing units or his/her agent, and within thirty (30) days following transfer of title, to the Duxbury Housing Authority, that his/her or their family's annual income level does not exceed the maximum level as established by the Commonwealth's Division of Housing and Community Development, and as may be revised from time to time.

The maximum housing cost for affordable units created under this Bylaw is as established by the Commonwealth's Division of Housing and Community Development or as revised by the Town.



#### **560.11 Preservation of Affordability; Restrictions on Resale**

Each affordable unit created in accordance with this Bylaw shall have the following limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for affordable income households. The resale controls shall be established through a deed restriction on the property, recorded at the Plymouth County Registry of Deeds or the Land Court, and shall be in force for as long a period as is lawful.

Resale price - Sales beyond the initial sale to a qualified affordable income purchaser shall include the initial discount rate between the sale price and the unit's appraised value at the time of resale. This percentage shall be recorded as part of the restriction on the property noted in Section 560.11. For example, if a unit appraised for \$300,000 is sold for \$225,000 as a result of this Bylaw, it has sold for 75% of its appraised value. If, several years later, the appraised value of the unit at the time of proposed resale is \$325,000, the unit may be sold for no more than \$243,750, or 75% of the appraised value of \$325,000.

Right of first refusal to purchase - The purchaser of an affordable housing unit developed as a result of this Bylaw shall agree to execute a deed rider prepared by the Town, granting, among other things, the Town's right of first refusal for a period not less than one hundred and eighty (180) days to purchase the property of assignment thereof, in the event that, despite diligent efforts to sell the property, a subsequent qualified purchaser cannot be located.

The Planning Board or Board of Appeals shall require, as a condition for special permit approval under this Bylaw, that the deeds to the affordable housing units contain a restriction against renting or leasing said unit during the period for which the housing unit contains a restriction on affordability.

The Planning Board or Board of Appeals shall require, as a condition for special permit approval under this Bylaw, that the applicant comply with the mandatory set-asides and accompanying restrictions on affordability, including the execution of the deed rider noted in Section 560.11. The Zoning Enforcement Officer shall not issue an occupancy permit for any affordable unit until the deed restriction is recorded at the Plymouth County Registry of Deeds or the Land Court.

#### **560.12 Fees-in Lieu of Affordable Housing Unit Provision**

As an alternative to the requirements of Section 560.5, and as allowed by law, an applicant may contribute to the Duxbury Housing Trust Fund to be used for the development of affordable housing in lieu of constructing and offering affordable units within the locus of the proposed development or off-site.

Calculation of fees-in-lieu of units. The applicant for development subject to this Bylaw may pay fees in lieu of the construction of affordable units. For the purposes of this Bylaw, the fee in lieu of the construction or provision of affordable units is determined to be \$200,000 per unit. For example, if the applicant is required to construct two

affordable income units, they may opt to pay \$400,000 in lieu of constructing or providing the units. Unless and until adjusted by Town Meeting, the fee in lieu of the construction of affordable units shall increase three (3%) percent every twelve months from the effective date of this Bylaw.

Schedule of fees in lieu of payments. Fees in lieu of payments shall be paid according to the schedule set forth in Section 560.6 (3), above.

## **ATTACHMENT B**

Examples of use restrictions that will serve as models for Dunstable's affordable housing:

- 1) Westford Housing Authority Affordable Housing Restriction for Rental Property.
- 2) Westford Housing Authority Local Initiative Program Deed Rider for Ownership
- 3) City of Newton Dedication of Restrictive Covenants (low-income elderly housing)

## **HOUSING STABILIZATION FUND REHABILITATION INITIATIVE (RENTAL)**

### **AFFORDABLE HOUSING RESTRICTION**

DUNSTABLE HOUSING AUTHORITY, a body politic and corporation of the Commonwealth of Massachusetts, with an address of \_\_\_\_\_ (the “Developer”), grants with quitclaim covenants, to the Massachusetts Housing Partnership Fund Board, a Massachusetts public instrumentality and body politic and corporate, having a mailing address of Two Oliver Street, Boston, Massachusetts 02109, its successors and permitted assigns (the HSF Provider”), exclusively for the purpose of ensuring retention of housing for occupancy by low income persons and families, the following described Affordable Housing Restriction on those certain \_\_\_\_\_ known as \_\_\_\_\_ under Master Deed recorded with the \_\_\_\_\_ County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_, (collectively the “Property”).

The terms of this Affordable Housing Restrictions, authorized by G.L. c.184, §§31-33 and otherwise by law, are as follows:

1. Purposes. The purpose of this Affordable Housing Restriction is to assure that the Property will be retained as affordable housing for occupancy by low and moderate income families.
2. Scope. The Developer intends, declares and covenants, on behalf of itself and its successors and assigns, that the covenants and restrictions set forth in this Affordable Housing Restriction regulating and restricting the use, occupancy and transfer of the Property (i) shall be and are covenants running with the Property, encumbering the Property and binding upon the Developer’s successors in title and all subsequent owners of the Property, (ii) are not merely personal covenants of the Developer, and (iii) shall bind the Developer and its successors and assigns (and the benefits shall inure to the HSF Provider and to any past, present or prospective tenant of the Property). The Developer acknowledges that it has received assistance from the HSF Provider in developing the Property as affordable rental housing, which assistance includes an advance of funds from the HSF Provider funded with proceeds of an award to HSF Provider from the Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development (“DHCD”) under the Rehabilitation Initiative of the Housing Stabilization Fund (the “Rehabilitation Initiative”) created pursuant to St. 1993, c. 494, budget line item 3722-8900 and continued by St. 1998, c. 257, budget line item 7004-8987 and St. 2002, c. 244, budget line item 7004-7014 (the “Act”) with regulations and guidelines adopted thereunder and promulgated at 760 CMR 24.00 (collectively, the “Regulations”). This Affordable Housing Restriction shall continue in force for its stated term regardless of the prior repayment of such grant.

3. Duration Not Limited. This Affordable Housing Restriction is intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law. The Developer hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for this Affordable Housing Restriction to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are intended to be satisfied, or in the alternative that an equitable servitude has been created to ensure that this Affordable Housing Restriction runs with the land.
4. Term of the Restriction. The term of this Affordable Housing Restriction shall be fifty (50) years from the date hereof.
5. Subsequent Conveyances. Each and every contract, deed or other instrument hereafter executed conveying the Property or portion thereof shall expressly provide that such conveyance is subject to this Affordable Housing Restriction, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to this Affordable Housing Restriction.
6. Permitted Use. The Property shall be used for \_\_\_\_\_ units of multi-family rental housing (the "HSF Assisted Units") shall all be deemed assisted under the HSF Program. Developer shall not permit the use of any HSF Housing Unit for any purpose other than rental housing. Each Housing Unit shall contain complete facilities for living, sleeping, eating, cooking and sanitation, which are to be used on other than a transient basis. Each unit of the Housing Units shall meet the housing quality standards set forth in the regulations of the United States Department of Housing and Urban Development ("HUD") as 24 CFR §982.401 or any successor thereto, the accessibility requirements at 24 CFR Part 8 or any successor thereto (which implement Section 504 of the Rehabilitation Act of 1973) and, if applicable, the design and construction requirement of 24 CFR §100.205 or any successor thereto (which implement the Fair Housing Act).
7. Tenant Selection.
  - a. Nondiscrimination. The Developer shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, sexual preference, national origin, or any other basis prohibited by law in the lease, use and occupancy of the Housing Units or in connection with the employment or application for employment of persons for the operation and management of the Housing Units.

- b. Selection Policies. The Developer shall adopt and submit to HSF Provider for approval resident selection policies and criteria acceptable to SHF Provider that:
- i. Are consistent with the purpose of providing housing to Low Income Families and Moderate Income Families, as defined below and required herein;
  - ii. Are reasonably related to HSF Program eligibility of prospective tenants and to the prospective tenants' ability to perform the obligations of the Developer's form lease;
  - iii. Give reasonable consideration to the housing needs of Families (as defined below) that would have preference under Section 6(c)(4)(A) of the United States Housing Act of 1937 (42 USC §1437, et seq.);
  - iv. Provide for (x) the selection of residents from a written waiting list in the chronological order of their application, insofar as practicable and (y) the prompt written notification to any rejected applicant of the grounds for any rejection;
  - v. The Developer shall also provide the HSF Provider with an affirmative marketing plan acceptable to the HSF Provider. The affirmative marketing plan must comply with all applicable statutes, regulations and executive orders, with HSF Provider's affirmative marketing requirements and with SHF Provider's directives reflecting the agreement between HSF Provider and HUD in the case of NAACP, Boston Chapter v. Kemp. The approved marketing plan and the approved resident selection policies and criteria shall be adhered to in every respect.

8. Income and Rent Restrictions.

- a. Income Limits. During the first forty (40) YEARS OF THE TERM OF THIS Affordable Housing Restriction, the HSF Assisted Units shall be leased exclusively to Families (as defined herein) whose annual incomes are less than or equal to eighty (80%) percent of the median income for the Area ("Low Income Families") based upon family size as determined by HUD for the ten (10) years thereafter, the HSF Assisted Units shall be leased exclusively to Families whose incomes are less than or equal to one hundred (100%) percent of the median income of the area ("Moderate-Income Families") based upon family size as determined by HUD. A "Family" is defined as one or more individuals occupying a unit and satisfying the standards adopted by HUD for the so-called Section 8 Program under the United States Housing Act of 1937 and promulgated at 24 CFR Part 812. The "Area" is defined as the Lowell, MA PMSA. A

Family's annual income shall be the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family (other than children under the age of 18 years), including all net income derived from assets for the 12-month period following the effective date of certification of income. Annual income specifically includes and excludes certain types of income as set forth in, and shall be determined in accordance with, 24 CFR Part 813 (or any successor regulations).

- b. Rent Restriction. The monthly rent charged to tenants of HSF Assisted Units shall not exceed the lesser of:
  - i. The fair market rent for existing housing for comparable units in the Area as established by HUD under regulations promulgated at 24 CFR §888.111 (or successor regulations), less the monthly allowance established by HSF Provider for the utilities and services (excluding telephone) to be paid by the tenant; or
  - ii. An amount that does not exceed thirty (30%) percent of the monthly income of a Family whose annual income equals sixty-five (65%) percent of the median income for the Area, as determined by HUD, with adjustment for the number of bedrooms in the unit, as provided by HUD. In determining the maximum monthly rent that may be charged for a unit under this clause (ii), the Developer shall subtract from the above amount an allowance established by HSF Provider for any utilities and services (excluding telephone) to be paid by the resident. Monthly income shall equal one-twelfth of annual income.
- 9. Income Certifications. The Developer represents, warrants and covenants that the determination of whether a Family occupying a HSF Assisted Unit meets the income requirements set forth herein shall be made by Developer at the time of leasing of a Housing Unit and thereafter at least annually on the basis of the current income of such Family. In initially verifying a Family's income, the Developer shall examine the source documents evidencing annual income (e.g., wage statements, interest statements, unemployment compensation statements) for the Family. Developer shall maintain as part of its Project records copies of all leases of HSF Assisted Units in the Project and all initial and annual income certifications by tenants of the HSF Assisted Units. Within 60 days after the end of each calendar year of occupancy of any HSF Assisted Unit, the Developer shall provide to the HSF Provider annual reports consisting of certifications regarding the annual and monthly gross and adjusted income of such Families at the time of their initial occupancy of a Housing Unit. The annual reports shall be in a form approved by the HSF Provider and shall contain such supporting documentation as the HSF Provider shall reasonably require. In addition to the foregoing, Developer shall keep such additional records and prepare and submit to HSF Provider such additional

reports as HSF Provider may deem necessary to ensure compliance with the requirements of this Affordable Housing Restriction and of the Rehabilitation Initiative.

10. Rent Schedule. Initial monthly rents and allowances for utilities and services for all HSF Assisted Units shall be as set forth in Exhibit A attached hereto. Annually, as part of the annual reports required under Section 9 above, Developer shall submit to HSF Provider a proposed schedule of monthly rents and monthly allowances for utilities and services for all HSF Assisted Units. The rent schedule shall include the maximum rents applicable to HSF Assisted Units under Section 8 above. Such schedule shall be subject to the approval of HSF Provider for compliance with the requirements of Section 8 above. Rents for HSF Assisted Units shall not be increased without the HSF Provider's prior written approval of either (x) a specific request by Developer for a rent increase or (y) the next annual schedule of rents and allowances. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days prior written notice by Developer to all affected tenants.
11. Lease Form. The Developer shall not include in any lease for a HSF Assisted Unit any of the following provisions:
  - a. Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the Developer in a lawsuit brought in connection with the lease.
  - b. Agreement by the tenant that the Developer may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out of the unit. The Developer may dispose of such personal property in accordance with state law.
  - c. Agreement by the tenant not to hold the Developer or the Developer's agents legally responsible for any action or failure to act, whether intentional or negligent.
  - d. Agreement of the tenant that the Developer may institute a lawsuit without notice to the tenant.
  - e. Agreement by the tenant that the Developer may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
  - f. Agreement by the tenant to waive any right to a trial by jury.



- g. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.
- h. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Developer against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

All leases for HSF Assisted Units shall be on a form reasonably approved by HSF Provider, shall be for terms of not less than one (1) year, unless by mutual agreement between the tenant and Developer, and shall require tenants to provide information required for the Developer to meet its reporting requirements hereunder. Developer may not terminate the tenancy or refuse to renew the lease of an occupant of a HSF Assisted Unit except (i) for serious or repeated violation of the terms and conditions of the lease; (ii) for violations of applicable federal, state or local law; (iii) for completion of the tenancy period for transitional housing; or (iv) for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days by Developers service on the tenant of a written notice specifying the grounds for the action.

12. Transfer Restrictions. Developer shall not sell, transfer, convey, rent (except for leases or occupancy agreements made in connection with the Permitted Uses that are substantially in the form approved by HSF Provider), encumber as security for financing or in any other way exchange all or any portion of (i) the Property, or (ii) interests in Developer without the express written permission of HSF Provider. Without limiting the generality of the foregoing, the Permitted Encumbrances are hereby approved by HSF Provider.
- a. Any sale, transfer or other disposition (each a "transfer") of all or any part of the Property shall further be subject to the Purchase Option and First Refusal Right, as described below, and to such further terms and conditions with respect thereto as may be set forth in the Act and the Regulations.
  - b. Upon request by Developer, DHCD shall sign a certificate, in form and substance reasonably acceptable to DHCD, stating whether, as of a specified date, any Purchase Option or First Refusal Right remains in effect, or has been exercised, terminated, waived, or assigned, and otherwise conforming with the certification requirements described below.
  - c. No transfer of all or any part of the Property to any party other than DHCD or its assignee shall be consummated unless and until (i) the period for the exercise of the Purchase Option and/or the First Refusal Right, as applicable, shall have expired without DHCD's exercise of its rights thereunder, or (ii) DHCD shall have unconditionally waived its rights thereunder in writing.

13. Purchase Option

- a. Upon the expiration of the term of the affordability restrictions imposed by this Affordable Housing Restriction, as described below (the “Restriction Term”), DHCD shall have the right to purchase the Developer’s interest in the Property from Developer, at a price equal to the then-current appraised value of the Property, less the total outstanding balance, at the time of such purchase, of all principal, interest and any other charges payable under the Loan, and any and all other outstanding obligations of Developer with respect thereto )the “Purchase Option”), by delivering written notice to Developer of its election to exercise the Purchase Option by or before the date that is one hundred twenty (120) days after the expiration of the term of this Affordable Housing Restriction(the “Option Exercise Deadline”). If DHCD shall have failed to deliver such written notice of its election to exercise the Purchase Option to Developer by the Option Exercise Deadline, DHCD shall be deemed to have unconditionally waived the Purchase option, and the Purchase Option shall automatically terminate, and shall have no further force or effect.
- b. DHCD shall have the right at any time to assign its rights under this Purchase Option to a qualified developer selected by DHCD in accordance with the Act and the Regulations, and effective as of any such assignment, all rights and obligations of DHCD with respect to such Purchase Option shall automatically be deemed to apply to such assignee, and all references to “DHCD” in this Section shall automatically be deemed to refer to such assignee (except to the extent a provision explicitly provides otherwise).
- c. Promptly upon request by DHCD at any time or from time to time, either before the Option Exercise Deadline or after DHCD’s exercise of the Purchase Option, Developer shall provide DHCD with a copy of, or otherwise make available for DHCD’s review at a mutually convenient time and location, any and all material owned by or readily available to Developer that an unrelated third-party potential buyer would reasonably request in connection with its due diligence for the acquisition of the Property, including, by way of example but not of limitation, deeds, title insurance policies, appraisals, studies, reports, and other materials relating to the Property and/or any encumbrance(s) subject to which the Property is to be conveyed, or otherwise reasonably necessary or appropriate for DHCD to review in connection with its exercise of the Purchase Option.
- d. The appraised value of the Property shall be determined at DHCD’s request by the method specified in the Act (as may be more fully described in the Regulations and in accordance with DHCD policies, and the costs of the appraisers shall be shared equally by DHCD (or its assignee) and the Developer (unless the Regulations provide otherwise).

- e. The closing for the sale of the property to DHCD shall take place in accordance with applicable provisions of the Regulations, by or before the date that is one hundred twenty (120) days after the Option Exercise Deadline (i.e., on or before the date that is two hundred forty (240) days after the expiration of the term of the affordability restrictions imposed by this Restriction), by the close of the business day, at the Registry of Deeds for the county or district which the Property is located; provided, however, that if DHCD reasonably determines additional time is necessary to effect the closing due to delays of Developer in providing DHCD with the diligence material described above or any other failure by Developer fully to cooperate with preparations for the sale or for other reasons (excepting only delays for which DHCD is solely responsible), the closing date may be extended to a date reasonably determined by DHCD, which shall be specified in a written notice from DHCD setting forth the reasons for such extension, delivered to Developer by or before the date originally scheduled for the closing. The parties may also mutually agree to extend the date of the closing by written instrument.
- f. The transfer to DHCD pursuant to this Purchase Option shall be subject to such other requirements as may be more fully described in the Regulations consistent with the Act. Adjustments in the purchase price for recording fees, deed excise stamp taxes and other charges shall be made, and any other issues associated with the transfer shall be resolved, in accordance with standard conveyancing practice in the Commonwealth of Massachusetts. If either party so desires, the parties shall enter into a purchase and sale agreement memorializing the terms of the sale, consistent with the terms hereof and of the Act; provided, however, that this Purchase Option shall be binding regardless of whether the parties execute a purchase and sale agreement. Notwithstanding any other provision hereof to the contrary, if, after delivering notice of its intention to exercise the Purchase Option, DHCD determines, in its sole discretion, that it is not in the best interest of DHCD to effect the purchase, DHCD may terminate the Purchase Option at any time, upon written notice to Developer recorded and/or registered; provided, however, that such termination right shall apply to DHCD only and not to any assignee.
- g. Concurrently with its acquisition of the Property, DHCD (or its assignee) shall cause to be recorded and/or registered an affordable housing restriction, in compliance with the Act and any other applicable statutory requirements for the same (and, in the case of an assignee, in form acceptable to DHCD, in its discretion), which shall require that the Property shall be used only for the purposes of reserving or providing affordable housing thereon, which housing shall remain affordable for a period of not less than forty (40) years.

14. First Refusal Right

- a. If Developer intends at any time or from time to time prior to DHCD's exercise (or unconditional waiver) of the Purchase Option, as described above, to transfer all or any part of its interest in the Property, and Developer receives a bona fide offer for such transfer that Developer desires to accept (each, an "Offer"), Developer shall promptly deliver to DHCD written notice of the same (which shall not be deemed to have been duly delivered to DHCD unless it contains a copy of §14(c) below), together with a copy of such Offer (the "Offer Notice"). Developer shall provide HSF Provider with such reasonable evidence as HSF Provider may require to satisfy HSF Provider as to the bona fide nature of the Offer.
- b. DHCD shall have the right to purchase the Developer's interest in the Property (or the portion(s) thereof to which the offer relates), at the same price and on the same terms set forth in such Offer (the "First Refusal Right"), by delivering to Developer and recording and/or registering written notice of its election to exercise such First Refusal Right, in accordance with the terms set forth below (the "Exercise Notice"), by or before the date that is one hundred twenty (120) days after DHCD's receipt of such Offer Notice (such 120-day period, the "First Refusal Period"). If DHCD does not intend to exercise the First Refusal Right, DHCD may, but shall have no obligation to, notify Developer in writing that the First Refusal Right will not be exercised (the "Waiver Notice").
- c. If, by the expiration of the First Refusal Period with respect to an Offer, DHCD shall have failed to deliver to Developer such written Exercise Notice or a Waiver Notice, DHCD shall be deemed to have waived its First Refusal Right with respect to such Offer, subject to any revised First Refusal Right with respect to a modified Offer, as described below. However, DHCD shall retain a First Refusal Right for subsequent Offers and the Purchase Option as described above, notwithstanding any prior actual or deemed waiver of the First Refusal Right, or any intervening transfer of the Property or any portions) thereof. The First Refusal Right shall automatically expire upon the waiver, expiration or exercise of the Purchase Option.
- d. If any of the terms of an Offer shall be revised from the terms reflected in the Offer Notice in such a manner as to be materially more favorable to the Developer or if a closing pursuant to the Offer has not occurred on or before the date six months after the date of the Offer Notice but Developer shall promptly deliver to DHCD an Offer Notice with respect to such revised or continued Offer (which shall not be deemed to have been duly delivered to DHCD unless it contains a copy of §14(c) above), and DHCD shall have a new First Refusal Right with respect to such modified or continued Offer. The First Refusal Period for such new First Refusal Right shall run for a period of one hundred twenty (120) days

from the date of DHCD's receipt of the Offer Notice with respect to such revised or continued Offer.

- e. DHCD shall have the right at any time to assign its rights under the First Refusal Right to a qualified developer selected by DHCD in accordance with the Act and the Regulations, and effective as of any such assignment the rights and obligations of DHCD with respect to such First Refusal Right shall automatically be deemed to apply to such assignee, and all references to "DHCD" in this Section shall automatically be deemed to refer to such assignee (except to the extent a provision explicitly provides otherwise).
- f. In accordance with the provisions of the Act;
  - i. An Offer Notice containing the required language as described above shall be deemed to have been duly delivered if sent by regular and certified mail, return receipt requested (or by such other method as may be authorized under the Act or Regulations), addressed to DHCD (or to any assignee of DHCD, if DHCD has previously given Developer notice of such assignment, including the name and notice address of such assignee, in accordance with the notice provisions set forth herein (in the care of the keeper of records for DHCD, which, for purposes hereof shall be deemed to be the General of Chief Counsel of DHCD (or in care of the keeper of records for such assignee of DHCD, as applicable).
  - ii. The Exercise Notice or Waiver Notice shall be duly signed by a designated representative of DHCD or of the assignee of DHCD, as the case may be and (x) mailed to developer by certified mail (or such other method as may be authorized under the Act) at the notice address set forth in the Offer Notice and (y) recorded and/or registered.
  - iii. An affidavit acknowledged by a notary public that DHCD or its designated representative has mailed an Exercise Notice or a Waiver Notice (the "Affidavit") shall conclusively establish the manner and time of the giving of such notice. Any Affidavit may be recorded and/or registered by either party.
  - iv. Each Offer Notice, Exercise Notice and Waiver Notice shall contain the name of the record owner of the Property and a description of the premises to be transferred, in form adequate to identify the same. Each Affidavit shall have attached to it a copy of the Offer Notice to which it relates.
- g. The closing for the sale of the Property (or, if applicable, the part thereof that is the subject of the Offer) to DHCD shall take place in accordance and compliance

with applicable provisions of the Regulations, by or before the date that is one hundred twenty (120) days after the expiration of the First Refusal Period (i.e., on or before the date that is two hundred forty (240) days after DHCD's receipt of the relevant Offer Notice), by the close of the business day, at the Registry of Deeds for the county or district in which the Property is located; provided, however (such date, the "Closing Deadline"); provided however, that if DHCD reasonably determines additional time is necessary to effect the closing, due to delays of Developer in providing DHCD with the diligence material described below or any other failure by Developer fully to cooperate with preparations for the sale of for other reasons (excepting only delays for which DHCD setting forth the reasons for such extension, delivered to Developer and recorded an/or registered, by or before the date originally scheduled for the closing. The parties may also mutually agree to extend the date of the closing, by written instrument; provided, however, that in such event, the parties shall execute an instrument reflecting such extension which shall be recorded and/or registered by or before the date originally scheduled for the closing.

- h. Concurrently with the delivery of the Offer Notice, Developer shall provide DHCD with a copy of, or otherwise make available for DHCD's review at a mutually convenient time and location, all material relating to the Property (or the part thereof that is the subject of the Offer) and/or the proposed sale, transfer, or other disposition thereof that has been made available to the party making the Offer, and shall thereafter promptly make available to DHCD any additional material made available to such party. Promptly upon any request therefore by DHCD, Developer shall provide DHCD with a copy of or otherwise make available for DHCD's review at a mutually convenient time and location, any and all other material owned by or readily available to Developer that an unrelated third-party buyer would reasonably request in connection with its due diligence for an acquisition of such Property, including, by way of example but not of limitation, deeds, title insurance policies, appraisals, studies, reports, or other materials relating to such Property and/or any encumbrance(s) subject to which the Property is to be conveyed, or t\otherwise reasonably necessary or appropriate for DHCD to review in connection with its exercise of the First Refusal Right.
- i. The transfer to DHCD pursuant to this First Refusal Right shall be subject to such other requirements as may be more fully described in the Regulations consistent with the Act. Adjustments in the purchase price for recording fees, deed excise stamp taxes and other charges shall be made, and any other issues associated with the transfer shall be resolved, in accordance with standard conveyancing practice in the Commonwealth of Massachusetts. If either party so desires, the parties shall enter into a purchase and sale agreement memorializing the terms of the sale, consistent with the terms hereof and of the Act; provided, however, that this First Refusal Right shall be binding regardless of whether the parties execute a

purchase and sale agreement. Notwithstanding any other provision hereof to the contrary, if, after delivering notice of its intention to exercise the First Refusal Right, DHCD determines, in its sole discretion, that it's not in the best interests of DHCD to effect the purchase, DHCD may terminate the First Refusal Right at any time, upon written notice delivered to Developer and recorded and/or registered; provided, however, that such termination right shall apply to DHCD only, and not to any assignee.

- j. Concurrently with its acquisition of the Property, DHCD (or its assignee) shall cause to be recorded an/or registered an affordable housing restriction, in compliance with the Act and any other applicable statutory requirements for the same (and, in the case of an assignee, in form acceptable to DHCD, in its discretion), which shall require that such Property shall be used only for the purposes of preserving or providing affordable housing thereon, which housing shall remain affordable for a period of not less than forty (40) years.
- 15. No Demolition. The Developer shall not demolish any part of the Project or substantially subtract from any real or personal property included within the Property except in conjunction with renovation or rehabilitation of the Housing Units or construction of a new project on the Property, in either case subject to the prior written consent of the HSF Provider, which consent may be granted or withheld in the HSF Provider's sole judgment.
  - 16. Casualty. The Developer represents, warrants and agrees that if the Property, or any part thereof, shall be damaged or destroyed, the developer (subject to the approval of the lender(s) providing financing) will use its best efforts to repair and restore the Housing Units to substantially the same condition as existed prior to the event causing such damage or destruction, and the Developer represents, warranty and agrees that the Housing Units shall thereafter continue to operate in accordance with the terms of this Affordable Housing Restriction.
  - 17. Other Federal Requirements: Inspection. Any use of the Property or activity thereon which is inconsistent with the purpose of this Affordable Housing Restriction is expressly prohibited. Developer hereby grants to HSF Provider and its duly authorized representatives the right to enter the Property (a) at reasonable times and in a reasonable manner for the purpose of inspecting the Property to determine compliance with this Affordable Housing Restriction or any other agreement between Developer and HSF Provider and (b) after 30 days prior written notice, to take any reasonable and appropriate action under the circumstances to sure any violation of the previsions of this Affordable Housing Restriction. The notice referred to in clause (b) shall include a clear description of the course and approximate cost of the proposed cure.

18. Enforcement. The rights hereby granted shall include the right of HSF Provider to enforce this Affordable Housing Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Property to its condition prior to any such violation (it being agreed that the HSF Provider will have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the HSF Provider. Developer covenants and agrees to reimburse HSF Provider all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Affordable Housing Restriction or in taking reasonable measures to cure any violation hereof, provided that a violation of this Affordable Housing Restriction is acknowledged by Developer or determined by a court of competent jurisdiction to have occurred. By its acceptance of this Affordable Housing Restriction, HSF Provider does not undertake any liability or obligation relating to the condition of the Property. If any provision of this Affordable Housing Restriction shall to any extent be held invalid, the remainder shall not be affected.
19. Further Assurances. The HSF Provider is authorized to record and/or register any notices or instruments appropriate to assuring the enforceability of this Affordable Housing Restriction; and the Developer on behalf of itself and its successors and assigns appoints the HSF Provider its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Developer and its successors and assigns agrees to execute any such instruments upon request. The benefits of this Affordable Housing Restriction shall be in gross and shall be assignable by the HSF Provider. The Developer and the HSF Provider intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of recording and/or registering of any instrument evidencing such approval.
20. Foreclosure. Notwithstanding anything herein to the contrary but subject to the next succeeding paragraph hereof, if the holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional or governmental lender shall acquire the Property by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Property in lieu of foreclosure, and provided that the holder of such mortgage has given HSF Provider not less than sixty (60) days' prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Property in lieu of foreclosure, then the rights and restrictions herein contained shall not apply to such holder upon such acquisition of the Property or to any purchaser of the property from such holder, and such Property shall, subject to the next two succeeding sentences, thereafter be free from all such rights and restrictions. The rights and restrictions contained herein shall not lapse if the Property is acquired through foreclosure or deed in



lieu of foreclosure by (i) Developer, (ii) any person with a direct or indirect financial interest in Developer, (iii) any person related to a person described in clause (ii) by blood, adoption or marriage, (iv) any person who is or at any time was a business associate of a person described in clause (ii), and (v) any entity in which any of the foregoing have a direct or indirect financial interest (each a "Related Party"). Furthermore, if the Property is subsequently acquired by a Related Party during the period in which this Affordable Housing Restriction would have remained in effect but for the provisions of this Section, this Affordable Housing Restriction shall be revived and shall apply to the Property as though it had never lapsed.

In the event such holder conducts a foreclosure or other proceeding enforcing its rights under such mortgage and the Property is sold for a price in excess of the sum of the outstanding principal balances of all notes secured by mortgages of the Property plus all future advances, accrued interest and all reasonable costs and expenses which the holders thereof are entitled to recover pursuant to the terms of such mortgages, such excess shall be paid to the HSF Provider in consideration of the loss of the value and benefit of the rights and restrictions herein contained and released by the HSF Provider pursuant to this Section in connection with such proceeding (provided, that in the event that such excess shall be so paid to the HSF Provider by such holder, the HSF Provider shall thereafter indemnify such holder against loss or damage to such holder resulting from any claim made by the mortgagor of such mortgage to the extent that such claim is based upon payment of such excess by such holder to the HSF Provider in accordance herewith, provided that such holder shall give the prompt notice of any such claim and shall not object to intervention by the HSF Provider in any proceeding relating thereto). To the extent the Developer possesses any interest in any amount which would otherwise be payable to the HSF Provider under this paragraph, to the full extent permissible by law, the Developer hereby assigns its interest in such amount to said holder for payment to the HSF Provider.

21. Notices. Any notice, request or other communication which either party hereto may be required or may desire to give hereunder shall be made in writing, and shall be deemed to have been properly given if hand delivered, if sent by recognized overnight courier, receipt confirmed, or if mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Developer:

65 Tadmuck Road  
Westford, MA 01886  
Attn: Executive Director

If to HSF Provider

Massachusetts Housing Partnership Fund Board  
160 Federal Street  
Boston, Massachusetts 02110

If to DHCD:  
Department of Housing and Community Development  
One Congress Street  
Boston, Massachusetts 02114  
Attention: Office of the Chief Counsel

or such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. A notice sent by certified or registered mail shall be deemed given three days after mailing; a notice sent by overnight courier shall be deemed given one day after deposit with such courier; and a notice delivered by hand shall be deemed given upon receipt.

22. Amendment. This Affordable Housing Restriction may not be amended, nor may any obligation hereunder be waived or released, without first obtaining the written consent of the HSF Provider and of DHCD.
23. Governing Law. This Agreement shall be governed by the laws of The Commonwealth of Massachusetts.

No documentary stamps are required as this Affordable Housing Restriction is not being purchased by the HSF Provider.

Executed under seal this \_\_\_\_ day of \_\_\_\_\_, 2004.

WESTFORD HOUSING AUTHORITY

By: \_\_\_\_\_

Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss. \_\_\_\_\_, 2004

Then personally appeared the above-named \_\_\_\_\_, \_\_\_\_\_ of Westford Housing Authority proved to me through satisfactory evidence of identification, which was \_\_\_\_\_, to be the person whose name is signed on the preceding instrument and acknowledged the foregoing instrument to be his or her free act and deed and the free act and deed of said Authority, before me.

\_\_\_\_\_  
Notary Public

My Commission Expires:

EXHIBIT A – Initial Rent Schedule

EXHIBIT A

Initial Rent Schedule

AFFORDABLE HOUSING RESTRICTION

WESTFORD HOUSING AUTHORITY, a body politic and corporate of the Commonwealth of Massachusetts, with an address of 65 Tadmuck Road, Westford, Massachusetts 01886 (the "Housing Authority") grants with quitclaim covenants, to the Town of Westford, a municipal corporation with office at 55 Main Street, Westford, Massachusetts (the "Town") exclusively for the purpose of ensuring the retention of housing for occupancy by low income persons and families, the following described Affordable Housing Restriction on those three certain condominium units known as Units 8, 10, and 11 constituting a part of the Brook side Mill condominium, 8 Brookside Road, Westford, Massachusetts, under Master Deed recorded with the Middlesex North Registry of Deeds at Book 17738, Page 39 (collectively, the "Property").

The Housing Authority hereby agrees that the property shall be subject to the following rights and restrictions which are hereby imposed for the benefit of, and shall be enforceable by the "Town":

1. All the terms and provisions of the special permit granted to Brookside Mill, LLC, which special permit is dated August 15, 2001 issued by the Planning Board of the Town of Westford recorded with the Middlesex North District Registry of Deeds at Book 13563, Page 214.
2. Time Restriction: This affordable housing restriction shall remain in force and effect in perpetuity unless the Town herein releases, in writing, the Housing Authority from said restriction;

***IN WITNESS WHEREOF***, WESTFORD HOUSING AUTHORITY has caused its corporate seal to be hereto affixed and to be signed in its name and behalf by

\_\_\_\_\_ its \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, in the year two thousand four.

Signed in the presence of:

WESTFORD HOUSING AUTHORITY

\_\_\_\_\_ BY: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF: MIDDLESEX

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2004, before me a Notary Public, the undersigned officer, personally appeared, \_\_\_\_\_, known to me or satisfactorily proven) to be the person whose name is subscribed to the within instrument as agent for WESTFORD HOUSING AUTHORITY, and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I set my hand and official seal.

---

Notary Public

My commission expires: \_\_\_\_\_

LOCAL INITIATIVE PROGRAM

**DEED RIDER  
For  
Ownership Project**

(annexed to and made part of that certain deed (the "Deed")  
from \_\_\_\_\_ ("Grantor")  
to \_\_\_\_\_ ("Grantee")  
dated \_\_\_\_\_, 200\_.)

WITNESSETH

WHEREAS, pursuant to M.G. L. c. 40B, §§20-23 (the "Act") and the final report of the Special Legislative Commission Relative to Low and Moderate Income Housing Provisions issued in April, 1989, regulations have been promulgated at 760 CMR 45.00 et seq. (the "Regulations") which establish the Local Initiative Program ("LIP");

WHEREAS, the Department of Housing and Community Development, the "Successor Agency" to the Executive Office of Communities and Development of the Commonwealth of Massachusetts, duly organized and existing pursuant to Chapter 204 of the Acts of 1996, administers the LIP Program on behalf of the Commonwealth;

WHEREAS, it is the purpose of the LIP Program to give cities and towns greater flexibility in their efforts to provide affordable housing to households having low and moderate incomes.

WHEREAS, the City/Town of \_\_\_\_\_ (the "Municipality") acting by and through its Chief Elected Official (as that term is defined in the Regulations) has elected to participate in the LIP Program:

WHEREAS, DHCD has determined that the rights and restrictions granted herein to DHCD and to the Municipality serve the public's interest in the creation and retention of affordable housing for persons and families of low and moderate income and in the restricting of the resale price of property in order to assure its affordability by future low and moderate income purchasers;

WHEREAS, pursuant to the LIP Program, eligible purchasers such as the Grantee are given the opportunity to purchase certain property at a discount of the property's appraised fair market value if the purchaser agrees to convey the property on resale to an eligible purchaser located by the Municipality or DHCD, to the Municipality, or to DHCD for a "Maximum Resale Price" equal to the lesser of (a) the appraised fair market value of the property at the time of resale, as determined by DHCD, multiplied by the applicable Discount Rate (as hereinafter defined), or (b) the amount equal to the purchase price for which a credit-worthy eligible purchaser earning seventy percent (70%) of area median income could obtain mortgage financing (based on underwriting assumptions used by bona fide mortgage lenders at the time of resale) and assuming that such an eligible buyer will not spend more than thirty percent (30%) of household income on the payment of principal, interest, real estate taxes, condominium or homeowner's fees, mortgage insurance, and homeowner's insurance premiums), as shall be calculated by DHCD in its sole discretion. The term "bona fide mortgage lenders" shall mean mortgage lenders offering thirty (30) year fixed rate mortgages with interest rates no greater than conforming, conventional market rate mortgages. Notwithstanding anything in this Deed Rider, the Maximum Resale Price shall not be less than the purchase price that the Grantee paid for the Property plus extraordinary capital expenses paid out-of-pocket by Grantee prior to closing, provided that DHCD and the Municipality shall have given written authorization for incurring such expense prior to the expense being incurred, and plus any necessary marketing expenses as may have been approved by DHCD and the Municipality.

WHEREAS, the Grantor and the Grantee are participating in the LIP Program, and in accordance with the LIP Program the Grantor is conveying that certain real property more particularly described in the Deed ("Property") to the Grantee at a consideration which is less than the appraised value of the Property; and

WHEREAS, a Discount Rate equal to \_\_\_% of the appraised fair market value of the Property (the "Discount Rate") as determined by DHCD is hereby assigned to the Property, and such Discount Rate shall be used in determining the Maximum Resale Price of the Property (UPON ITS DETERMINATION OF THE DISCOUNT RATE FOR THE PROPERTY, DHCD WILL ISSUE TO THE GRANTEE A CERTIFICATE IN RECORDABLE FORM (THE "DISCOUNT RATE CERTIFICATE") WHICH STATES THE APPROVED DISCOUNT RATE FOR THE PROPERTY AND WHICH SHALL BE RECORDED WITH THE FIRST DEED OF THE PROPERTY.);

NOW THEREFORE, as further consideration from the Grantee to the Grantor, DHCD and the Municipality for the conveyance of the Property at a discount in accordance with the LIP Program, the Grantee, his heirs, successors and assigns, hereby agrees that the Property shall be subject to the following rights and restrictions which are hereby imposed for the benefit of, and shall be enforceable by, the Grantor's assignees and designees, the Director of the Department of Housing and Community Development, or its successors, assigns, agents and designees ("Director") and the Municipality, acting by and through its Chief Elected Official.



1. Right of First Refusal: (a) When the Grantee or any successor in title to the Grantee shall desire to sell, dispose of or otherwise convey the Property, or any portion thereof, the Grantee shall notify the Director and the Municipality in writing of the Grantee's intention to so convey the property ("Notice"). The Notice shall contain an appraisal of the fair market value of the Property (assuming the Property is free of all restrictions set forth herein) acceptable to the Director and the Municipality prepared by a real estate appraiser acceptable to the Director and the Municipality and qualified to appraise property for secondary mortgage markets and recognized as utilizing acceptable professional appraisal standards in Massachusetts, and the Notice shall set forth the Discount Rate and the Maximum Resale Price of the Property. Within thirty (30) days of the giving of the Notice by the Grantee, the Municipality shall notify the Grantee in writing (with a copy to the Director) as to whether the Municipality is proceeding to locate an eligible purchaser of the Property or the Municipality shall exercise its right of first refusal to purchase the Property (the Municipality's Notice.) If the Municipality's Notice states that the Municipality is not proceeding to locate an eligible purchaser and that the Municipality shall not exercise its right of first refusal to purchase the Property, or if the Municipality fails to give the Municipality's Notice within said thirty (30) days then, and only under such circumstances, the Director may, at any time from the thirty first (31st) day after the giving of the Notice to and including the fortieth (40th) day after the giving of the Notice, notify the Grantee in writing (with a copy to the Municipality) as to whether the Director is proceeding to locate an eligible purchaser of the Property or whether the Director shall exercise its right of first refusal, to purchase the Property (the Director's Notice".) For the purpose of this Deed Rider, an "eligible purchaser" shall mean a purchaser who satisfies the criteria set forth in the LIP Program guidelines in effect at the time the Municipality or the Director locates such purchaser, and who, if located by the Municipality, is ready and willing to purchase the Property within ninety (90) days after the Grantee gives the Notice, or who, if located by the Director, is ready and willing to purchase the Property between ninety (90) days and one hundred five (105) days after the Grantee gives the Notice.

(b) In the event that (i) the Municipality's Notice states that the Municipality does not intend to proceed to locate an eligible purchaser and that the Municipality does not intend to exercise its right of first refusal to purchase the Property, or the Municipality fails to give the Municipality's Notice within the time period specified above and (ii) the Director's Notice states that the Director does not intend to proceed to locate an eligible purchaser and that the Director does not intend to exercise its right of first refusal to purchase the Property, or the Director fails to give the Director's Notice within the time period specified above, the Grantee may convey the Property to any third party at fair market value, free of all restrictions set forth herein, provided, however, all consideration and payments of any kind received by the Grantee for the conveyance of the Property to the third party which exceeds the Maximum Resale Price shall be immediately and directly paid to the Municipality. Upon receipt of this excess amount, if any, the Municipality, acting by and through its Chief Elected Official, and the Director or the Director's designee shall issue to the third party a certificate in recordable form (the "Compliance Certificate") indicating the Municipality's receipt of the excess amount, if applicable, or

indicating that no excess amount is payable, and stating that the Municipality and the Director have each elected not to exercise its right of first refusal hereunder and that all rights, restrictions, agreements and covenants set forth in this Deed Rider shall be henceforth null and void. This Compliance Certificate is to be recorded in the appropriate Registry of Deeds or registered with the appropriate Registry District of the Land Court and such Compliance Certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that such excess amount, if any, has been paid to the Municipality, or that no excess amount is payable, and that the rights, restrictions, agreements and covenants set forth herein are null and void. The sale price to a third party shall be subject to DHCD's approval, with due consideration given to the value set forth in the appraisal accompanying the Notice. DHCD's approval of the sale price shall be evidenced by its issuance of this Compliance Certificate.

(c) In the event the Municipality, within said thirty (30) day period, notifies the Grantee that the Municipality is proceeding to locate an eligible purchaser or that the Municipality shall exercise the Municipality's right of first refusal to purchase the Property, the Municipality may locate an eligible purchaser, who shall purchase the Property at the Maximum Resale Price subject to Deed Rider satisfactory in form and substance to DHCD, within ninety (90) days of the date that the Notice is given or the Municipality may purchase the Property itself at the Maximum Resale Price within ninety (90) days of the date that the Notice is given. If the Municipality shall fail to locate an eligible purchaser who purchases the Property within ninety (90) days of the date that the Notice is given, and if the Municipality fails to purchase the Property itself within said period, then, and only in such circumstances the Director, without any additional notice to the Grantee, may between ninety one (91) days of the date that the Notice is given and one hundred five (105) days of the date that the Notice is given, purchase the Property itself at the Maximum Resale Price, or locate an eligible purchaser, who shall between ninety one (91) days and one hundred five (105) days of the date that the Notice is given purchase the Property at the Maximum Resale Price, subject to a Deed Rider satisfactory in form and substance to DHCD. If more than one eligible purchaser is located by the Municipality, the Municipality shall conduct a lottery or other like procedure approved by DHCD to determine which eligible purchaser shall be entitled to the conveyance of the Property. If more than one eligible purchaser is located by the Director, the Director shall conduct a lottery or other like procedure in the Director's sole discretion to determine which eligible purchaser shall be entitled to the conveyance of the Property.

(d) If an eligible purchaser is selected to purchase the Property, or if the Municipality or the Director elects to purchase the Property, the Property shall be conveyed by the Grantee to such eligible purchaser or to the Municipality or the Director as the case may be, by a good and sufficient quitclaim deed conveying a good and clear record and marketable title to the Property free from all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed (ii) any lien for municipal betterments assessed after the date of the Notice, (iii) provisions of local building and zoning laws, (iv) all easements, restrictions, covenants and agreements of record specified in the Deed from the Grantor to

Grantee, (v) a Regulatory Agreement among DHCD, the Municipality and \_\_\_\_\_ [the Project Sponsor] dated \_\_\_\_\_ and recorded with the \_\_\_\_\_ Registry of Deeds in Book \_\_\_\_, Page \_\_\_\_, (the "Regulatory Agreement") or any successor regulatory agreement entered into between DHCD and the Municipality pursuant to the provisions of Section 16 of the Regulatory Agreement, (vi) such additional easements, restrictions, covenants and agreements of record as the Municipality and the Director consent to, such consent not to be unreasonably withheld or delayed, and (vii) in the event that the Property is conveyed to an eligible purchaser, a Deed Rider satisfactory in form and substance to DHCD which the Grantee hereby agrees to annex to said deed.

(e) Said deed shall be delivered and the purchase price paid (the "Closing") at the Registry of Deeds in the County where the Property is located, or at the option of the eligible purchaser (or the Municipality or the Director, as the case may be, if the Municipality or the Director is purchasing the Property), exercised by written notice to the Grantee at least five (5) days prior to the delivery of the deed, at such other place as the eligible purchaser (or the Municipality or the Director, as the case may be, if the Municipality or the Director is purchasing the Property) may designate in said notice. The Closing shall occur at such time and on such date as shall be specified in a written notice from the eligible purchaser (or the Municipality or the Director, as the case may be, if the Municipality or the Director is purchasing the Property) to the Grantee, which date shall be the least five (5) days after the date on which such notice is given, and if the eligible purchaser is located by the Municipality, or if the Municipality is purchasing the Property no later than ninety (90) days after the Notice is given by the Grantee, or if the eligible purchaser is located by the Director, or if the Director is purchasing the Property, no earlier than ninety one days (91) days after the Notice is given by the Grantee and no later than one hundred five (105) days after the Notice is given by the Grantee.

(f) To enable Grantee to make conveyance as herein provided, Grantee may if he so desires at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests; all instruments so procured to be recorded simultaneously with the delivery of said deed.

(g) Water and sewer charges and taxes for the then current tax period shall be apportioned and fuel value shall be adjusted as of the date of Closing and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the eligible purchaser or by the Municipality or the Director.

(h) Full possession of the Property free from all occupants is to be delivered at the time of the Closing, the Property to be then in the same condition as it is in on the date hereof, reasonable wear and tear only excepted.

(i) If Grantee shall be unable to give title or to make conveyance as above stipulated, or if any change of condition in the Property not included in the above exception shall occur, then Grantee shall be given a reasonable time not to exceed thirty (30) days after the date on which

the Closing was to have occurred in which to remove any defect in title or to restore the Property to the condition hereby provided for. The Grantee shall use best efforts to remove any such defects in the title whether voluntary or involuntary and to restore the Property to the extent permitted by insurance proceeds or condemnation award. The Closing shall occur fifteen (15) days after notice by Grantee that such defect has been cured or that the Property has been so restored. The eligible purchaser (or the Municipality or the Director, as the case may be, if the Municipality or the Director is purchasing the Property) shall have the election, at either the original or any extended time for performance, to accept such title as the Grantee can deliver to the Property in its then condition and to pay therefore the purchase price without deduction, in which case the Grantee shall convey such title, except that in the event of such conveyance in accordance with the provisions of this clause, if the Property shall have been damaged by fire or casualty insured against or if a portion of the Property shall have been taken by a public authority, then the Grantee shall, unless the Grantee has previously restored the Property to its former condition, either:

- (i) pay over or assign to the eligible purchaser or the Municipality or the Director as the case may be, on delivery of the deed, all amounts recovered or recoverable on account of such insurance or condemnation award less any amounts reasonable expended by the Grantee for the partial restoration, or
- (ii) if a holder of a mortgage on the Property shall not permit the insurance proceeds or the condemnation award or part thereof to be used to restore the Property to its former condition or to be so paid over or assigned, give to the eligible purchaser or to the Municipality or the Director, as the case may be, a credit against the purchase price, on delivery of the deed, equal to said amounts so retained by the holder of the said mortgage less any amounts reasonable expended by the Grantee for any partial restoration.

(j) If the Municipality fails to locate an eligible purchaser who purchases the Property within ninety (90) days after the Notice is given, and the Municipality does not purchase the Property during said period, and the Director fails to locate an eligible purchaser who purchases the Property between ninety one (91) days and one hundred five (105) days after the Notice is given, and the Director does not purchase the Property within said period, then following expiration of one hundred five (105) days after the Notice is given by Grantee, the Grantee may convey the Property to any third party at fair market value, free and clear of all rights and restrictions contained herein, including, but not limited to the Maximum Resale Price, provided, however, all consideration and payments of any kind received by the Grantee for the conveyance of the Property to the third party which exceeds the Maximum Resale Price shall be immediately and directly paid to the Municipality. Upon receipt of this excess amount, if any, the Municipality and the Director shall issue to the third party a Compliance Certificate in recordable form indicating the Municipality's receipt of the excess amount, if any, and indicating that the Municipality and the Director have each elected not to exercise its right to locate an eligible purchaser and its right of first refusal hereunder and that all rights, restrictions,

agreements and covenants contained herein are henceforth null and void. This Compliance Certificate is to be recorded in the appropriate Registry of Deeds or registered with the appropriate Registry District of the Land Court and such Compliance Certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that such excess amount, if any, has been paid to the Municipality and that the rights, restrictions, agreements and covenants set forth herein are null and void. The sale price to a third party shall be subject to DHCD's approval, with due consideration given to the value set forth in the appraisal accompanying the Notice. DHCD's approval of the sale price shall be evidenced by its issuance of this Compliance Certificate.

2. Resale and Transfer Restrictions: Except as otherwise stated herein, the Property or any interest, therein shall not at any time be sold by the Grantee, the Grantee's successors and assigns, and no attempted sale shall be valid, unless:

(a) the aggregate value of all consideration and payments of every kind given or paid by the eligible purchaser (as located and defined in accordance with Section 1 above) or the Municipality or the Director, as the case may be, to the then owner of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property, and (i) if the Property is conveyed to an eligible purchaser, unless a certificate (the "Eligible Purchaser Certificate") is obtained and recorded, signed and acknowledged by the Director or the Director's designee and the Municipality acting by and through its Chief Elected Official which Eligible Purchaser Certificate refers to the Property, the Grantee, the eligible purchaser thereof, and the Maximum Resale Price therefor, and states that the proposed conveyance, sale or transfer of the Property to the eligible purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider, and unless there is also recorded a new Deed Rider executed by the eligible purchaser which new Deed Rider the Eligible Purchaser Certificate certifies is satisfactory in form and substance to DHCD and the Municipality; (ii) if the Property is conveyed to the Municipality unless a Certificate (the "Municipal Purchaser Certificate") is obtained and recorded, signed and acknowledged by the Director or the Director's designee and by the Municipality, acting by and through its Chief Elected Official, which Municipal Purchaser Certificate refers to the Property, the Grantee, the Municipality, and the Maximum Resale Price for the Property and states that the proposed conveyance, sale or transfer of the Property to the Municipality is in compliance with the rights, restrictions, covenants and agreements contained in this Deed Rider; or

(b) pursuant to Sections 1(b) or 1(f), any amount in excess of the Maximum Resale Price which is paid to the Grantee by a purchaser who is permitted to buy the Property pursuant to Sections 1(b) or 1(f), is paid by the Grantee to the Municipality, and the Director or the Director's designee and the Municipality acting by and through its Chief Elected Official execute and deliver a Compliance Certificate as described in Section 1(b) or 1(f) for recording with the appropriate registry of deeds or registry district.

(c) Any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may rely upon a Compliance Certificate or an Eligible Purchaser Certificate or a Municipal Purchaser Certificate referring to the Property as conclusive evidence of the matters stated therein and may record such Certificate in connection with conveyance of the Property, provided, in the case of an Eligible Purchaser Certificate and a Municipal Purchaser Certificate the consideration recited in the deed or other instrument conveying the Property upon such resale shall not be greater than the consideration stated in the Eligible Purchaser Certificate or the Municipal Purchaser Certificate as the case may be. If the Property is conveyed to the Director, the acceptance by the Director of a deed of the Property from the Grantee and the recording of such deed shall be deemed conclusive evidence that all rights, restrictions, covenants and agreements set forth in this Deed Rider have been complied with and no certificate to that effect shall be necessary to establish the validity of such conveyance. If the Property is conveyed to the Municipality, any future sale of the Property by the Municipality shall be subject to the provisions of Section 4 of the Regulatory Agreement.

(d) Within ten (10) days of the closing of the conveyance of the Property from Grantor to Grantee, the Grantee shall deliver to the Municipality and to the Director a true and certified copy of the Deed of the Property, together with information as to the place of recording thereof in the public records. Failure of the Grantee, or Grantee's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance.

(f) The Grantee understands and agrees that nothing in this Deed Rider or the Regulatory Agreement in any way constitutes a promise or guarantee by DHCD or the Municipality that the Grantee shall actually receive the Maximum Resale Price for the Property or any other price for the Property.

3. Restrictions Against Leasing and Junior Encumbrances: The Property shall not be leased, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the Director and the Municipality, provided, however, that this provision shall not apply to a first mortgage granted in connection with this conveyance. Any rents, profits, or proceeds from any transaction described in the last preceding sentence which transaction has not received the prior written consent of the Director and the Municipality shall be paid to and be the property of the Municipality. In the event that the Director and the Municipality in the exercise of their absolute discretion consent to any such lease, refinancing, encumbrance or mortgage, it shall be a condition to such consent that all rents, profits or proceeds from such transaction which exceed the carrying costs of the Property as determined by DHCD and the Municipality in their sole discretion shall be paid to and be the property of the Municipality.

4. Rights of Mortgagees: (a) Notwithstanding anything herein to the contrary, but subject to the next succeeding paragraph hereof, if the holder of record (other than the Grantor or any

person related to the Grantor by blood, adoption, or marriage, or any entity in which the Grantor has a financial interest) of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or its successors or assigns (other than the Grantor, or any person related to the Grantor by blood, adoption or marriage, or any entity in which the Grantor has a financial interest) shall acquire the Property by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Property in lieu of foreclosure, and provided that the holder of such mortgage has given DHCD and the Municipality not less than (60) days prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Property in lieu of foreclosure, the rights and restrictions contained herein shall not apply to such holder upon such acquisition of the Property, any purchaser (other than the Grantor or any person related to the Grantor by blood, adoption or marriage, or any entity in which the Grantor has a financial interest) of the Property at a foreclosure sale conducted by such holder, or any purchaser (other than the Grantor or any person related to the Grantor by blood, adoption or marriage, or any entity in which the Grantor has a financial interest) of the Property from such holder, and such Property shall thereupon and thereafter be free from all such rights and restrictions.

(b) In the event such holder, conducts a foreclosure or other proceeding enforcing its rights under such mortgage and the Property is sold for a price in excess of the greater of (i) the sum of the outstanding principal balance of the note secured by such mortgage plus all future advances, accrued interest and all reasonable costs and expenses which the holder is entitled to recover pursuant to the terms of the mortgage and (ii) the Maximum Resale Price applicable on the date of the sale, such excess shall be paid to the Municipality in consideration of the loss of the value and benefit of the rights and restrictions herein contained held by the Director and the Municipality and released by the Director and the Municipality pursuant to this section in connection with such proceeding (provided, that in the event that such excess shall be so paid to the Municipality by such holder, the Municipality shall thereafter indemnify such holder against loss or damage to such holder resulting from any claim made by the mortgagor of such mortgage to the extent that such claim is based upon payment of such excess by such holder to the Municipality in accordance herewith, provided that such holder shall give the Municipality prompt notice of any such claim and shall not object to intervention by the Municipality in any proceeding relating thereto.) In order to determine the Maximum Resale Price of the Property at the time of foreclosure or other proceeding, the Municipality or DHCD may, at its own expense, obtain an appraisal of the fair market value of the Property satisfactory to such holder. The Maximum Resale Price shall be determined as set forth above in this Deed Rider. If the holder disagrees with such appraised value, the holder may obtain a second appraisal, at the holder's expense and the Maximum Resale Price shall be equal to the average of the two appraisal amounts multiplied by the Discount Rate. To the extent the Grantee possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the fullest extent permissible by law, the Grantee hereby assigns its interest in such amount to said holder for payment to the Municipality.

5. Covenants to Run With the Property: (a) The Grantor and the Grantee, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grant and assign to the Municipality, the Municipality's agents, successors, designees and assigns and to the Director, the Director's agents, successors, designees and assigns the right of first refusal to purchase the Property as set forth herein, and the right to enforce the rights and restrictions, covenants and agreements set forth in this Deed Rider. The Grantor and the Grantee hereby grant to the Municipality and to the Director the right to enter upon the Property for the purpose of enforcing any and all of the restrictions, covenants and agreements herein contained, and to enforce the Municipality's and the Director's rights of first refusal to purchase the Property and the rights of the Municipality and the Director to designate a purchaser of the Property as set forth herein, and of taking all actions with respect to the Property which the Municipality or the Director may determine to be necessary or appropriate, with or without court order, to prevent, remedy or abate any violation of the restrictions, covenants and agreements and to enforce the Municipality's and the Director's rights of first refusal to purchase the Property and the rights of the Municipality and the Director to designate a purchaser of the Property set forth herein. The rights hereby granted to the Municipality and the Director shall be in addition to and not in limitation of any other rights and remedies available to the Grantor or the Municipality or the Director for enforcement of the restrictions, rights, covenants and agreements set forth in this Deed Rider. It is intended and agreed that all of the agreements, covenants, rights and restrictions set forth above shall be deemed to be covenants running with the Property and shall be binding upon and enforceable against the Grantee, the Grantee's successors and assigns and any party holding title to the Property, for the benefit of and enforceable by the Municipality, the Municipality's agents, successors, designees and assigns and the Director, the Director's agents, successors, designees and assigns for a period which is the shortest of (i) fifty years from the creation of the restriction, or (ii) upon the recording of a Compliance Certificate or (iii) upon the recording of an Eligible Purchaser Certificate and a new Deed Rider executed by the eligible purchaser referenced in the Eligible Purchaser Certificate, which new Deed Rider the Eligible Purchaser Certificate certifies is in form and substance satisfactory to DHCD and the Municipality or (iv) upon the conveyance of the Property to the Municipality and the recording of a Municipal Purchaser Certificate as set forth herein or (v) upon the conveyance of the Property to the Director in accordance with the terms hereof.

(b) This Deed Rider and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be an affordable housing restriction as that term is defined in M.G.L. c. 184, § 31 and as that term is used in M.G.L. c. 184, §§ 26, 31, 32, and 33.



(c) The Grantee intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Deed Rider and the covenants, agreements, rights and restrictions contained herein shall be and are covenants running with the land, encumbering the Property for the term of this Deed Rider, and are binding upon the Grantee's successors in title, (ii) are not merely personal covenants of the Grantee, and (iii) shall bind the Grantee, its successors and assigns and enure to the benefit of the Municipality and the Director and their successors and assigns for the term of the Deed Rider. Grantee hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Deed Rider to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

(d) Without limitation on any other rights or remedies of the Grantor, the Municipality, and the Director, their agents, successors, designees and assigns, any sale or other transfer or conveyance of the Property in violation of the provisions of this Deed Rider, shall, to the maximum extent permitted by law, be voidable by the Municipality, the Municipality's agents, successors, designees and assigns or by the Director, the Director's agents, successors, designees or assigns by suit in equity to enforce such rights, restrictions, covenants, and agreements.

6. Notice: Any notices, demands or requests that may be given under this Deed Rider shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or such other addresses as may be specified by any party by such notice.

Municipality:

DHCD:

Department of Housing and Community Development

Att'n: LIP Director  
100 Cambridge Street, 3rd Floor  
Boston, MA 02114

Grantor:

Grantee:

Any such notice, demand or request shall be deemed to have been given on the day it is hand delivered or mailed.

7. Further Assurances: The Grantee agrees from time to time, as may be reasonably required by the Municipality or the Director, to furnish the Municipality and the Director with a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Property, information concerning the resale of the Property and all other information pertaining to the Property or the Grantee's eligibility for and conformance with the requirements of the LIP Program.

8. Waiver: Nothing contained herein shall limit the rights of the Director to release or waive, from time to time, in whole or in part, any of the rights, restrictions, covenants or agreements contained herein with respect to the Property. Any such release or waiver must be made in writing and must be executed by the Director or his/her designee.

9. Severability: If any provisions hereof or the application thereof to any person or circumstance shall come, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforced to the fullest extent permitted by law.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

Grantor:

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

Its \_\_\_\_\_

Grantee:

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

LSI\N-dr

COMMONWEALTH OF MASSACHUSETTS

County of \_\_\_\_\_, ss \_\_\_\_\_, 200\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document [Grantor], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public  
Print Name:  
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

County of \_\_\_\_\_, ss. \_\_\_\_\_, 200\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding document [Grantee], and acknowledged to me that he/she signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

Print Name:

My commission expires:

© DHCD When used in the Local Initiative Program, this form may not be modified without the written approval of the Department of Housing and Community Development.

## **DECLARATION OF RESTRICTIVE COVENANTS**

**CASCAP Realty, Inc.**, a nonprofit corporation organized under the laws of the Commonwealth of Massachusetts having an address of 678 Massachusetts Avenue, Cambridge, MA 02139, and owner in fee simple of property known as 241 Watertown Street, Newton, Massachusetts and described more fully in Exhibit A, pursuant to a Certificate of Vote of even date recorded herewith (the "Owner") hereby covenants and agrees for itself, its successors, heirs and assigns, that the parcel described in Exhibit A, attached hereto and incorporated herein, (hereinafter the "Property") shall be subject to the following restrictions for the benefit of the City of Newton, having a mailing address of Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts, 02459 (the "City"), its successors and permitted assigns and the Commonwealth of Massachusetts, acting by and through the Department of Housing and Community Development ("DHCD"), its successors and permitted assigns.

The terms of this Declaration of Restrictive Covenants, (hereinafter "Covenant") authorized by Massachusetts General Laws, Chapter 184, §§31-33 and otherwise by law, are as follows:

1. The purpose of this Covenant is to ensure that the Property will be retained as affordable housing for occupancy by low income elderly persons in accordance with the United States Department of Housing and Urban Development ("HUD") Section 202 program ("Section 202"), the Community Development Block Grant ("CDBG") program, or such successor programs, and with Condition No. 19 of the Decision of the Newton Zoning Board of Appeals in Docket No. 33-01, filed with the Newton City Clerk on November 28, 2001 and recorded herewith (the "Comprehensive Permit").
2. The Owner intends, declares and covenants on behalf of itself, its successors and assigns that these covenants, agreements, and restrictions are not merely personal covenants of the Owner and shall run with the land and shall bind the Owner, its successors and assigns and inure to the benefit of the City, DHCD, and their successors and assigns.
3. This Covenant is intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law. In the event approval pursuant to Sections 31-33 of Chapter 184 is not given, the restrictions contained herein shall endure for a period of thirty (30) years from the date of this Declaration and for such further time (not to exceed 80 years from the Completion Date, as defined below) as this Declaration may be lawfully extended. The Owner hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for this Covenant to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full, or in the alternative, that an equitable servitude has been created to insure that this Covenant runs with the land.
4. Completion Date: The date on which all required Certificates of Occupancy for the building(s) on the Property are issued and the Owner has provided written notification to the City

and the City has verified that all units are fully occupied. If the units receive Certificates of Occupancy and/or are occupied on different dates, then the Completion Date shall be the date of occupancy of the unit which is occupied last.

5. For a period of no more than eighty (80) years from the Completion Date as defined in paragraph 4 above, and without regard to the term of the Grant Agreement dated May 15, 2000, as amended by Amendment #1 dated August 22, 2001, between the City and Owner, or to any transfer of ownership, for the period which is forty (40) years from the Completion Date ("Initial Period"), the Owner shall provide thirty-four (34) units of housing for low income elderly persons at the Property and one (1) unit of housing for a resident manager, all in accordance with the requirements of the Section 202 program, or such successor program. For that period which is between forty (40) and eighty (80) years from the Completion Date ("Subsequent Period"), the Owner shall provide thirty-four (34) units of housing for low and/or very low income elderly persons and one (1) unit of housing for a resident manager in accordance with applicable regulatory requirements, as follows: If during the Subsequent Period, Owner receives continued funding from the Section 202 program, then the requirements of such program shall govern. However, if Owner no longer receives Section 202 funding, then the requirements of the stricter of the CDBG (or successor program), or Owner's alternate funding source shall apply.

6. (a) For so long as Owner receives funding from the Section 202 program, the Owner shall provide the City with copies of all reports required by and/or furnished to HUD as part of Section 202 program compliance and reporting requirements, contemporaneously with Owner's submission of such materials to HUD.

(b) In the absence of continued Section 202 program funding, the Owner shall maintain as part of its records copies of all leases governing the rental of the units as may be executed throughout the affordability period and all initial and annual income certification(s) by the tenant(s). Within 60 days after the end of each calendar year of occupancy, the Owner shall provide to the City annual reports consisting of certifications regarding the annual and monthly gross and adjusted income of each household occupying the units. With respect to a household that moved to a unit in the prior year, the annual report shall also include certification regarding the annual and monthly gross and adjusted incomes of any such household at the time of their initial occupancy of the unit. The annual reports shall be in a form approved by the City and shall contain such supporting documentation as the City shall reasonably require. In addition to the foregoing, Owner shall keep such additional records and prepare and submit to the City such additional reports as the City may deem necessary to ensure compliance with the requirements of this Declaration and of the Grant Agreement.

7. (a) Prior to initial occupancy of the units and annually thereafter for so long as the Owner receives Section 202 funding, the Owner shall furnish to the City the HUD-approved schedule of monthly rent and monthly allowances for utilities and services, within 30 days after its receipt from HUD.

(b) In the absence of continued Section 202 funding, the Owner shall furnish to the City the schedule of monthly rent and monthly allowances for utilities and services as required by the applicable program as outlined in Paragraph 5 above.

9.  
10.

8. The Owner shall not demolish any part of the Property or substantially subtract from any real or personal property of the Property except in conjunction with renovation or rehabilitation of the Property, in either case subject to the prior written consent of the City, which consent may be granted or withheld in the City's sole judgment. The Owner shall not permit the use of any residential unit for any purpose other than housing. The Owner covenants and agrees to maintain the Property in good order, repair, and condition and in compliance with all laws, regulations, ordinances, codes, orders, or other laws, now existing or hereafter enacted, regarding the habitability of the Property as low income housing for the elderly.

9. The Owner represents, warrants and agrees that if the Property, or any part thereof, shall be damaged or destroyed, the Owner (subject to the approval of the lender(s) which will provide the financing) will use its best efforts to repair and restore the Property to substantially the same condition as existed prior to the event causing such damage or destruction, and the Owner represents, warrants and agrees that the Property shall thereafter continue to operate in accordance with the terms of this Covenant and the Comprehensive Permit.

10. Any use of the Property or activity thereon which is inconsistent with the purpose of this Covenant or the Comprehensive Permit is expressly prohibited. The Owner shall carry out each activity provided for in this Covenant in compliance with all applicable federal laws and regulations concerning equal opportunity and fair housing, affirmative marketing, displacement, relocation, and acquisition, lead-based paint, conflict of interest, debarment and suspension and flood insurance, including any waivers or approvals given by HUD.

11. By its acceptance of this Covenant, the City does not undertake any liability or obligation relating to the condition of the Property.

12. (a) This Covenant is intended to and shall be subordinate to documents and instruments securing Owner's HUD Section 202 funding. Upon request of the Owner, the City agrees to execute, acknowledge and deliver any instruments deemed necessary to evidence such subordinate position.

(b) The City is authorized to record or file any notices or instruments appropriate to ensuring the enforceability of this Covenant. The Owner and its successors and assigns agree to execute any such instruments upon request. The Owner and the City intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

13. This Covenant shall be contained or referenced in any deed of conveyance of the subject Property or any other instruments conveying a non-leasehold interest in the Property or any part thereof and shall be equally binding on any subsequent owner of the title thereto whether acquired by grant, sale or any other means and such subsequent owner shall comply with this restriction for the remaining duration of said restriction.

14. (a) During the Initial Period, the City shall be given 60 days prior written notice of foreclosure sale and shall be provided with copies of all correspondence and documents related to the foreclosure proceedings in a timely manner.

(b) During the Subsequent Period, and in the absence of continued Section 202 funding, at least 60 days prior to the foreclosure sale by a lender or other transfer in lieu of foreclosure, the lender shall notify the City of its intent to so foreclose and shall allow the City the option/opportunity to assume the mortgage. In the event of such assumption of the mortgage, the Owner shall not further pledge or hypothecate said Property and the Owner's recapture of any equity it may have shall be deferred until such time as the Property is sold. If the option is exercised, the City may direct the sale of the Property at any time during the period of affordability and shall undertake to sell the property within a reasonable period of time after the expiration of the affordability period. In the event of such a sale, the monies received shall be applied first to any and all encumbrances outstanding with respect to the property in order of priority, next to the costs of sale, then to repay the City for any amounts expended on the assumption of the mortgage. Any sums remaining after the above payments shall then be paid to the person or entity which was Owner of record prior to assumption of the mortgage, in full satisfaction of its equity interest in the Property. In the event the City chooses not to exercise its option to assume the mortgage, then the affordability restriction created hereunder shall terminate upon foreclosure or by instrument in lieu of foreclosure, provided that the holder of the mortgage gives the City not less than 60 days prior written notice of the mortgagee's intention to foreclose upon the Property or to accept an instrument in lieu of foreclosure. Thereafter, if at any time following foreclosure or other transfer in lieu of foreclosure but still during the term of affordability, as defined in paragraph 5, the Owner of Record prior to foreclosure, any subsidiary thereof, or any newly formed entity that includes the former Owner or those with whom s/he or it has had family or business ties obtains ownership interest in the Property, the affordability period shall be revived in accordance with its original term.

15. All notices required under this and the preceding section shall be deemed to have been received if mailed, postage prepaid to the following:

For the City:                      Director  
    Dept. of Planning and Development  
    City Hall, 1000 Commonwealth Avenue  
    Newton, MA 02459

For Owner:                        Director  
    CASCAP Realty, Inc.  
    678 Massachusetts Avenue  
    Cambridge, MA

16. Enforcement.

(a) The rights hereby granted shall include the right of the City to enforce this Covenant by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Property to its condition



prior to any such violation (it being agreed that the City will have no adequate remedy at law), and such restoration shall be in addition to, and not in limitation of, any other rights and remedies available to the City. The Owner covenants and agrees to reimburse the City all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Covenant or in taking reasonable measures to cure any violation hereof, provided that a violation of this Covenant is acknowledged by Owner or determined by a court of competent jurisdiction to have occurred.

(b) Without limitation on any other rights or remedies of the City, its successors and assigns, the City shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

(1) specific performance of the provisions of this Covenant, which shall be the preferred remedy;

(2) voiding of any rental arrangement that violates this Covenant;

(3) in the case of any rental arrangement where the Owner is found to have violated willfully or in bad faith, then money damages for charges in excess of rents permissible under this Covenant.

(c) If any action is brought to enforce this Covenant, the prevailing party shall be entitled to reasonable attorneys' fees and other costs of bringing such action, in addition to any other relief or remedy to which such party may be entitled.

(d) The Owner hereby grants to the City and its duly authorized representatives the right to enter upon the Property upon reasonable notice for the purpose of enforcing the restrictions contained in this Covenant and to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Covenant. Notwithstanding the definition of Owner hereinbefore contained, the rights of enforcement for violations of this Covenant shall survive any subsequent sale or transfer of the Property.

17. Both the City and DHCD shall be deemed to be the holder of this Covenant. The City may assign this Covenant to the Newton Community Development Authority or such other City agency, department, commission, or authority, if the City determines that such assignment would be consistent with the purposes of this Covenant.

18. This Covenant shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Covenant must be in writing and executed by all of the parties hereto. If any provision of this Covenant shall to any extent be held invalid, the remainder shall not be affected.

**IN WITNESS WHEREOF** the said **CASCAP Realty, Inc.** has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by \_\_\_\_\_, its duly authorized representative, this 18th day of March, 2002.

**CASCAP Realty, Inc.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss.

March 18, 2002

Then personally appeared the above named \_\_\_\_\_ of **CASCAP Realty, Inc.** and acknowledged the foregoing instrument to be his/her free act and deed before me.

\_\_\_\_\_  
Notary Public  
My commission expires:

**EXHIBIT A**  
**Description of Property**

Parcel B shown on a Subdivision Plan prepared by Design Consultants, Inc., dated October 17, 2001 and entitled "Plan of Land 243 Watertown Street, Newton, Massachusetts prepared for CASCAP, Inc." to be recorded herewith and described as follows:

Beginning at a point on the east line of land of the city of Newton, said point bearing N02°-00'-50"E and 260.71 feet from the north line of Watertown Street;

Thence, running N02°-00'-50"E along the City of Newton 168.13 feet to a point;

Thence, running S66°-55'-20"E along the city of Newton 48.72 feet to a point at the Southwest corner of KF II Nominee Trust;

Thence, running S86°-00'-36"E 36.15 feet to a point;

Thence, running N70°-32'-27"E 106.18 feet to a point, the last two (2) courses being along said KF II Nominee Trust;

Thence, running S01°-47'-45"W along Newton Community Development Authority 202.99 feet to a point at the Northeast corner of Parcel A as shown on the aforesaid plan;

Thence, running N87°-59'-10"W 81.65 feet to a point;

Thence, running N02°-00'-50"E 16.55 feet to a point;

Thence, running N87°-59'-10"W 64.84 feet to a point;

Thence, running S02°-00'-50"W 1.80 feet to a point;

Thence, running N87°-59'-10"W 34.69 feet to the point of beginning, the last five (5) courses being along said Parcel A.

Parcel B contains 30,500 square feet, more or less, and is conveyed with the benefit of and is subject to certain access, utility and drain easements, all as recited in an easement agreement entitled "Mutual Easements for 237-253 Watertown Street, Newton, Massachusetts" to be recorded herewith, which easements are more particularly described and portrayed on the foregoing plan to be recorded herewith.